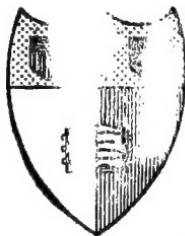




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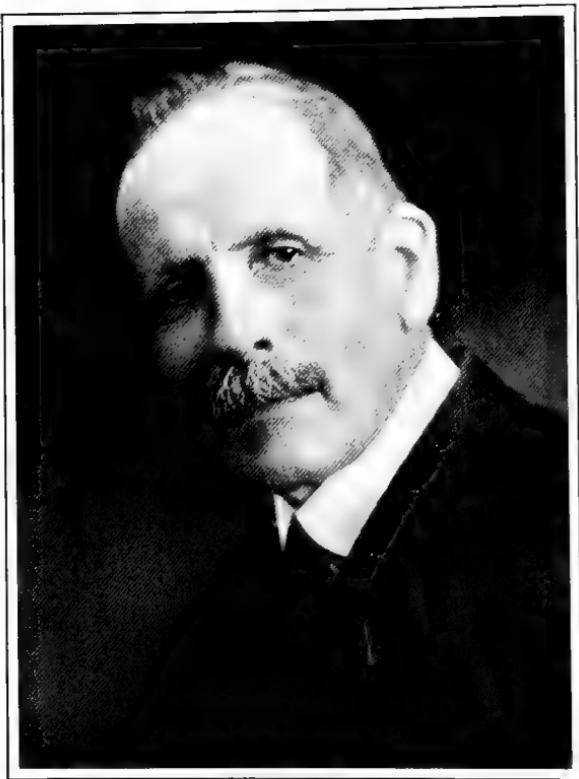












WILMER W. MAC ELREE





# SIDE LIGHTS ON THE BENCH AND BAR OF CHESTER COUNTY

BY  
WILMER W. MACELREE

---

*"The BAR and I fortuitously met,  
I ow'd a trifle and have paid the debt"*

---

WEST CHESTER, PA.  
1918

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by Wilmer W. MacElree

**TO MY OLD FRIEND  
NATHANIEL G. HICKMAN  
THIS VOLUME IS DEDICATED  
BY THE AUTHOR**



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## PUCKLETOWN

"Alack! when good men die, and the good turns they do us slide out of memory and are recalled but by the surprise of some such sad memento as that which now lies before us."

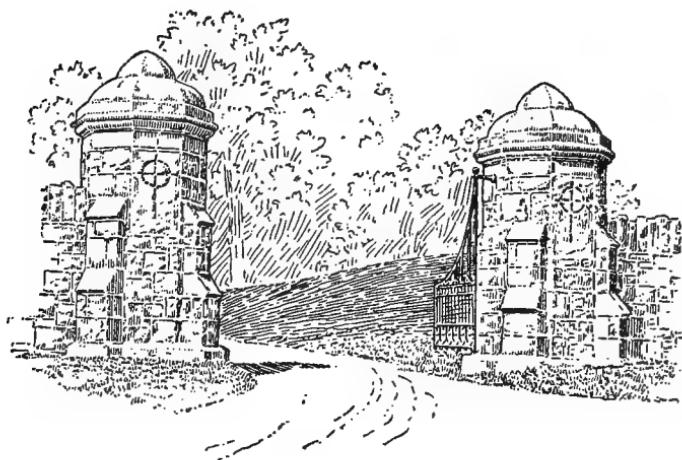
CHARLES LAMB, *Essays of Elia.*

WHO was Nathaniel Puckle? Reader, I am well aware that in a work of this kind historical precedents demand that I first state when Columbus discovered America, or at least when Penn landed at Upland; but as I am out of court and not closely connected with any historical society, I decline to be governed by precedents and renew my question: Who was Nathaniel Puckle?

Nathaniel Puckle was a mariner who spent his declining years in Philadelphia. What ships he had owned, or commanded, or sailed on, before he settled in that city, no one seems to know. He was also a merchant, but how successful in his dealings is alike unknown. For most of us, his claim to remembrance is found neither in his conduct of business in Philadelphia nor in his ventures on the sea, but in the fact that among the patents which he

secured from Penn, was one for 630 acres of land in Chester County. On the southern end of this tract, the northwestern quarter of West Chester is built; at its northern end—under the oaks—the friends of our youth are sleeping.

The road connecting these ends runs along the eastern line of the tract and is travelled by every variety of persons.



To an intensely serious mind, this road might serve as an analogue of life—stony, hilly, and short; but the crack of a golf-ball and a merry laugh would advise him that the country portion of the Puckle tract is not wholly consecrated to mourning.

Nathaniel Puckle! There is something about

thy name that interests me; something that provokes inquiry; something that now and then stirs my mind to ludicrous and dire imaginings.

Consider, reader, if Nathaniel Puckle, instead of being an elderly mariner and dying in 1706, had been a lusty pioneer and had felt a call to this wilderness in Goshen; if he had grown up with its inhabitants and had given his name to the town that sprang up on the best portion of his land, what a calamity would have fallen on this community!

Imagine the chagrin of a resident of West Chester's northwestern quarter stopping at the Ritz-Carleton, and finding himself compelled by his innate love of truth to register from *Puckletown!* Can you conceive of agony more excruciating? But Nathaniel Puckle died in due time, and Deborah, his daughter, to whom he willed his acres, considerably changed her name to Edmonds.

A cursive handwritten signature of the name "Nathaniel Puckle". The signature is fluid and elegant, with the "N" and "P" being particularly prominent.

Puckle's land was located in the western end of the Welsh tract, whose line separated it from the Township of Bradford. Its northern ex-

tremity was covered with oaks, beyond which stretched an indefinite tract of vacant land toward the Great Valley. Blazed trees marked its boundaries, and on its eastern side, in 1703, a notched sapling and a stake showed where Richard Thomas's land began and ended.

Thomas's story is better known than Puckle's—the conversion of his father to Quakerism—their sorrowful embarkation in “Ye Morning Star”—the loss of that father shortly after their arrival in America—the utter loneliness of the boy—his search for “good land” in the wilderness of Pennsylvania—his visit to Wales—the finding of his mother—the dissipation of his step-father—his return to this country with his sister—his marriage with Grace Atherton—his patent for land in Goshen—his patent for land in Whiteland—his home at Cata-moon-shink, where the dogs of the Indians kept the wild beasts at a distance: these and other incidents invest his life with unusual interest.

Whoever is fond of pathos, or love, or bold adventure, will find it here.

Thomas's patent of July 12, 1703, called for 1065 acres to the west of Puckle's land. His southern line began at Puckle's southeastern corner and continued in the same course for more than a mile.

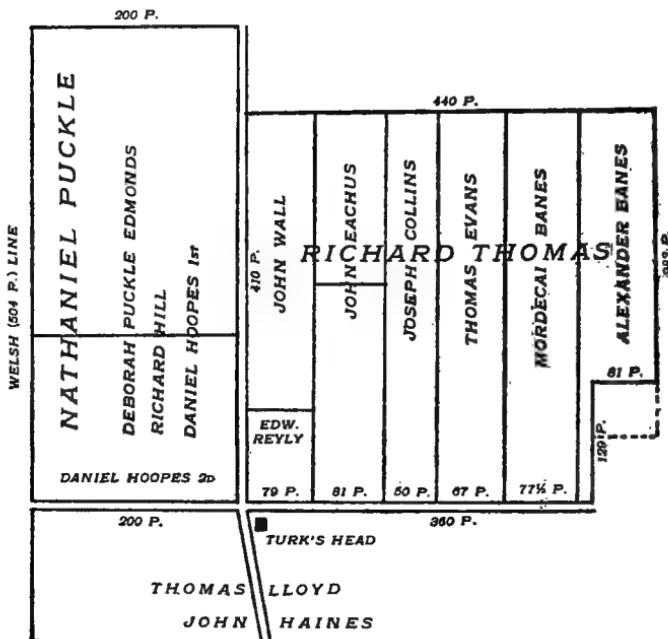
Thomas laid out his tract in strips, between parallel lines running north and south. In 1729 the last strip was taken by John Eachus. South of the Puckle and Thomas tracts lay the land belonging to the estate of Thomas Lloyd.

Lloyd had obtained a patent from Penn for 2215 acres. By his will of September 10, 1694, he appointed his wife Patience and his son Mordecai, together with Isaac Norris and David Lloyd, executors, and empowered them or any two of them to sell all of his holdings within the province of Pennsylvania or elsewhere in America. "Patience, his relict, judicially renounced the executorship," and Mordecai died; the remaining executors acted. They procured a patent from Penn's Commissioners on February 2, 1702, and then conveyed 965

acres to John Haines of Eversham, in the County of Burlington and Province of West New Jersey. On May 30, 1715, John Haines conveyed 365 acres to his son John, and by his will of November 4, 1728, gave him 50 acres

more. The remainder of his tract was divided among his other children.

Meanwhile, Deborah Edmonds and her husband had converted the Puckle tract into cash;



and Richard Hill after holding it for two years had sold it to Daniel Hoopes, who, on December 5, 1730, transferred 200 acres of it to the son that bore his name.

Daniel Groos

## CONTEMPT AT THE CROSS-ROADS

"Grow old along with me,  
The best is yet to be."

BROWNING, *Rabbi Ben Ezra.*

A CROSS-ROADS in Goshen Township! that and little more, was West Chester in the middle of the Eighteenth Century.

The township in which it lay was organized about 1704, and like several of its neighbors experienced difficulty in getting some of its boundary lines reduced to certainty.

In 1732, its inhabitants represented to his Majesty's Justices of the Court of Quarter Sessions, held at Chester, that in consequence of such uncertainty the township was "in great danger of being infested with profligate persons fleeing from neighboring provinces."

Eight years later, some settlers on a strip of land, "lying between the Townships of Cahn, Bradford, Goshen and Whiteland," presented a similar petition, informing the Court that "profligate persons . . . often settle upon poor barren spots of land."

Apparently Goshen apprehended danger only to its northern part. How many, if any, of such undesirable characters wandered southward and located at or near the Cross-roads, the records of that time do not disclose. Doubtless, for the most part, they went to other sections of the county where more congenial companions could be found; but the early history of Goshen hardly justifies the pleasing delusion that none of these northern barbarians settled in it.

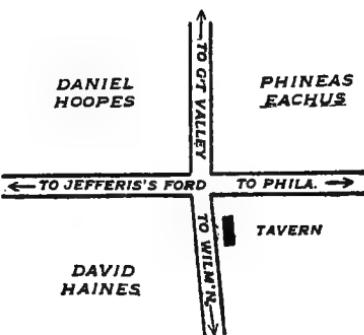
"Where was the Cross-roads," does some stranger ask?

At the point where Gay and High Streets now intersect. One road led eastwardly to Philadelphia and westwardly to Jefferis's Ford; the other led northwardly to the Great Valley and southwardly to Wilmington.

For an interesting description of the Cross-roads, West Chester owes a debt of gratitude to Joseph Townsend:

"The first knowledge that I had of the ground on which West Chester stands," says he, "was about 1760. The northeasterly field at the Cross-roads between the Philadelphia and Great Valley roads was owned by Phineas Eachus; the northwesterly one, between

the Valley and Brandywine roads, by Daniel Hoopes; the ground southwesterly, between the Brandywine and Wilmington roads, had an orchard thereon and belonged to the estate of David Haines; the ground southeasterly was a lot laid off for a tavern or establishment on which was a small one-story wooden house with a small shed room attached to the east part of it, in which a tavern was kept by the aforesaid Phineas Eachus. . . .



the shed belonging to the tavern for the accommodation of horses, with open front, on the Wilmington road, reached nearly half the distance from the dwelling house yard to the road leading to Philadelphia; the remaining front on the road with the ground back of said dwelling was occupied for a garden.

"There was a small log building connected with the south end of the shed and tavern yard in which was a store for the retailing of merchandise.

"Some of the inhabitants of the neighbor-

hood had obtained leave of Daniel Hoopes to erect a school-house in the corner of his field at the intersection of the roads leading to Brandywine and the Great Valley; the fence was removed, leaving an angular piece of ground for that purpose, sufficient for the building and *space northwesterly of it for the children to play on.*

"The house was built of logs, was filled in between with mortar, and furnished with a few tables and benches.

"The school-master was an Irishman by birth and lived in the stone house of David Haines."

While the school-house was small and appliances were few, Ralph Torrester conducted the school in such a manner that "many of the rising generation" of Townsend's day "received a plain and useful education."

In 1761, Phineas Eachus made application for a liquor license at his tavern and was

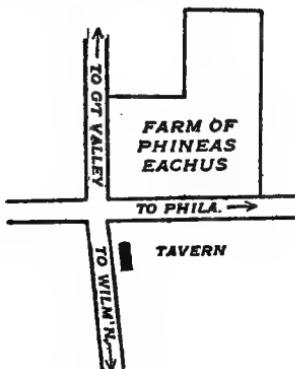
*Phineas Eachus*, refused. The next year he renewed his application, representing to the court that both roads (particularly the one leading to Wilmington) "were occupied by Travellers from Distant Parts and being destitute of

a Public House for Many Miles together is therefore Inconvenient for those who travel from Remote Parts and Burdensome to the Adjacent Inhabitants."

The argument proved effective and Phineas opened up his bar.

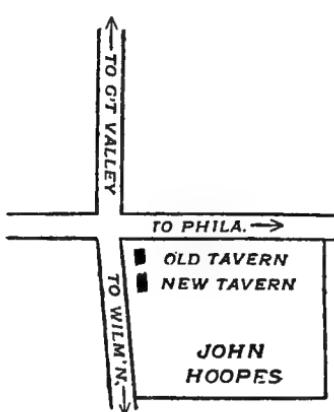
"He was a cooper by profession, as well as a tavern-keeper, and had the business carried on at a small log house that was built for the purpose about the same time that the school-house was put up. It stood on the corner of the field at the intersection of the two roads leading to Philadelphia and the Great Valley; but in time he became insolvent . . . and his farm between the two roads was purchased by Isaiah Matlack."

Such is the brief account of Phineas Eachus given by Joseph Townsend, to which may be added a few additional facts gleaned from dockets and records. John Eachus, his father, was the owner of two hundred and fifty acres of land in Goshen Township. In 1753, he deeded Phineas one hundred and fifty



acres of it, which made him one of the important figures at the Cross-roads. But, with the opening of his bar, he went into debt and mortgaged his farm for two hundred and thirty-six pounds to Philip Megowan. After this indebtedness matured he obtained a loan of four hundred and forty-six pounds from William Rettew and Isaiah Matlack. In 1768, when the latter loan became due, he was unable to meet it and his farm was sold under the hammer of the sheriff.

At this point Phineas disappears from the history of the Cross-roads and John Hoopes becomes the central figure.



John Hoopes was one of the largest land-holders at the Cross-roads. In 1751, he purchased fifty acres from John Haines; a year later he acquired fifty acres more from David Haines, and in 1769 he bought the tavern property of one acre and one hundred and twelve perches from Benjamin Trego. These tracts were contiguous

and made him the proprietor of more than one hundred acres south of the Philadelphia road.

On his "plantation, southeasterly of the old tavern," he "built a respectable looking brick house in the corner of his field a little south of the line of said lot and near the east line of the Wilmington road, into which the tavern was removed."

In August, 1769, he presented a petition for license, setting forth that he had purchased the tavern known by the name of the Turk's Head in Goshen, and as the house had been rendered unfit for tavern purposes by reason of its decay and other inconveniences he had built a new brick house near the other much more commodious for travellers.

On this petition so dexterously prepared the court laconically wrote:

*Allowed all the old House*

Naturally this action provoked some hasty expressions on the part of Hoopes which evidently reached the ears of the court, for, when John Harper filed a petition for license at

the Hoopes tavern in 1770, although he eulogized it as "a very convenient house within a

*Jno. Harper* few perches  
of the noted  
Tavern known

by the name of Turk's Head," the court, *servans  
sub pectore volnus*, refused his application.

After this refusal, Hoopes was willing to make certain concessions, in fact did make a conditional recantation:

"If," said he, "I have said anything Disrespectfull of the Bench Heretofore I am Heartilly sorey for it, and ask the Justices' Pardon and hope for Time to Come I shall be Ever Carefull of being Led astray as I have been heretofore. But I verey well know that there hath been No Paines Spared by a Malicious Set of Envious Peopel who have industriously helped to agravate our Unhappy Dispute, but if my Intreaties have not ye Desired Effect, I had rather suffer a Doubel Portion of the Misfortune than John Harper and the Publick Should Suffer on my account."

Even this manifestation of benevolence, this willingness to sacrifice himself for his friend and the public, was deemed insufficient by the court.

Two weeks later he found his memory, withdrew the "if," and said:

"Whereas I have spoke Disrespectfully of the Honorable Bench heretofore, I now declare that I am sorry for it and ask the Justices Pardon or any one of them that I treated with contempt."

With the return of memory came the grant of license.



Initials of John Hoopes on Date Stone  
taken from Wall of Turk's Head

## JUSTICE AT CHESTER

Hoc regnum dea gentibus esse  
Si qua fata sinant, jam tum, tenditque foveatque.  
VIRGIL, *Aeneid.*

**B**EFORE West Chester was a Cross-roads,  
Chester was a Shire-town.

While all roads did not lead to it, and the few that did were bad, all litigants throughout Chester County were expected to reach it by some road after the year 1682, for that year saw Justice make her temporary abode in the hamlet of Chester and extend her authority northward and westward.

A little more than a quarter of a century before the arrival of William Penn, the place was largely a tobacco plantation.

In 1645 it was too insignificant to obtain mention in the report of Andreas Hudde, the Dutchman sent out by Governor Kieft to learn the number and armament of the Swedes.

Three years later, Campanius refers to it as an "unfortified place," but lifts it a little out

of its obscurity by adding, "Some houses were built there."

The Indians called it Mecoponacka; the Swedes, Upland; the Dutch, Oplandt; and Penn, Chester.

Alas! Penn did more than name it. He constituted it the Shire-town of the County of Chester:

"I ordered and appointed all my courts of judicature for the Affairs of that County," said he, "to be there held and kept, and the *County gaol or Prison to be and remain there forever.*"

The County Court established by Penn was not unlike its Upland predecessor; in fact, Penn took over the local Court very much as he found it, exercising a supervisory jurisdiction through the Provincial Council. Its Justices were unlearned in the law, its rules of evidence were elastic enough to adjust themselves to the necessities of each case; its judgments and decrees were moulded by equitable considerations; in short, it was a court in which a suitor could try his own case without necessarily having a fool for a client.

The dockets of this early Court lie open before me. I find them as interesting today as Dr. Smith found them more than half a century ago,

when they furnished him the facts for the most entertaining pages of his *History of Delaware County*.

The first Court for Chester County met at Chester on February 14, 1682-3, with William Penn's "ancient friend," John Simcock, as President Judge.

Readers who are familiar with the records of the Upland Court will recognize the faces of Justices Clayton and Wade, but will miss those equally well-known justiciars, Otto Ernest Cock and Ralph Withers. Turn over a page, however, and you will see them at a Court on the 27th of the 4th month, called June, 1683, to which "William Penn, Esqr., Governor and Proprietary" shall lend the dignity of his presence.

The first Grand Jury of record in Pennsylvania made its appearance at this Court.

The title "Grand" was applied to a petit jury as early as September 12, 1682; but, as Ashmead suggests, the clerk used the term without comprehending its import, for the record shows that the jury did not present the defendant (Lawrence Dalboe), but passed upon his guilt.

It was not long after their first appearance that Grand Juries took themselves seriously and "assumed an importance scarcely equalled by the

Court itself." Not only did they bring public wants and the neglect of official duties to the notice of the Court, but individually they were pertinaciously vigilant in scrutinizing the conduct of their neighbors and "in subjecting to the exposure of judicial investigation every slight deviation from strict moral rectitude." No one can read their presentments without agreeing with Smith, that among the matters presented were many which should have been rectified by the kind offices of friends, or, considering the evils that resulted from their exposure, should have been allowed to pass into oblivion unnoticed.

Writers have speculated about how much law the Justices knew. The question cannot be definitely answered, but whether much or little they were united in resolving that the Bench must be respected.

At the February Court of 1685, John Colbert was fined forty shillings for contempt of Court in not appearing when lawfully summoned, and for abusing the officers of the Court, ten shillings more.

Abraham Buffingall, who at the same Court was convicted of abusing and menacing the magistracy of the County, was ordered "twenty-one

lashes at the Public Whipping post on his beare back well laid on and fourteen days' imprisonment at hard labour in the house of Correction."

No special whipping post is mentioned in the sentence; was there one at this time erected in Chester?

When this punishment was imposed on John Martin, in the previous year, the Court specified "the common whipping post at Chichester."

In 1690, when John appeared again, the lashes were to be laid on at "the cartes tayle."

From the first session of the County Court, in 1682, to that of 9th mo. 30th, 1704, there are seventeen instances of the imposition of this penalty. Of the seventeen culprits who received it, eight were women.

In 1700, the Justices and the Grand Jury ordered Ralph Fishborne and three others to "look after some repairs to the prison and also to provide a pair of stocks and a whipping post."

Nine years before, Edward Eglinton had broken the stocks at Chester and let out a prisoner. Since then no one had been committed by the Court to its rough embraces. Petty offenders were its usual victims.

For some reason the Township of Chester did not speedily comply with the Court's order, and

Chester 29 Decr of 9 month 84 of

new free grants must for the County &  
of Chester do respond ~~to~~ the Township  
of Chester for not ~~return~~ returning  
a sum of \$1000 and in paying post  
in the SD town

Donald meeting Hormon



in 1702 and 1703 it was presented by the Grand Jury for its neglect. In 1704, it was stimulated to action by a third presentment.

This last presentment accomplished its purpose, for, on May 25, 1708, the Court named "the common whipping post in Chester" as the place where Grace Phillips should suffer for her frailty.

The whipping of convicts was a favorite form of punishment not only in the early days, but continued to be such in Pennsylvania until the Act of September 15, 1786, abolished it.

From 1714 to 1786, the Court ordered it more than three hundred and fifty times, and fifty of the sentences were pronounced against women.

The number  
of lashes varied  
with the crime *tryed convicted & to be whip:*  
and the humor  
of the Justices. In the absence of either aggravating or extenuating circumstances defendants convicted of "felony" might reasonably count upon receiving twenty-one. This number was given in two hundred instances—larcenies abounding. In seventy-five cases, embracing various misdemeanors—fornication mainly—and a few felonies, fifteen stripes were adminis-

tered. For such offences as "horse-stealing" and "attempt to rape" the prescribed allotment was thirty-nine. When this last number was imposed the punishment of the pillory was generally added.

The whipping post was the one place where married women's rights were recognized by the Court. Jane Muckelwayne received the same number of lashes as her husband; so did the spouse of Edwin Murphy.

In exercising their discretion the Justices paid no regard to color. "Negro Richard" and "Negro Zook" doubtless received their sentences with more equanimity and submitted to their punishment more stoically when they reflected that the Court thought them entitled to the same number of stripes as their white neighbors on the trial list.

Offenders were sometimes convicted on several indictments at one term. When this happened, their punishments were frequently meted out to them at stated intervals. John Criswell—a larcenous fellow—was sentenced to twenty-one lashes on Thursday, fifteen on Friday, and the same number on Saturday. Criswell could console himself with the thought that it would all be over on Sunday; but Elizabeth Low—who

was given twenty-one for Thursday morning, fifteen for Thursday week, and eleven for Thursday fortnight—had her agony extended.

Perhaps the Justices thought the arrangement a merciful one. As Elizabeth is not here to tell us, we give them the benefit of the doubt.

In 1689, the peculiar case of Mary Taberfield came before the Court. When Mary was being sentenced she alleged that she was *enceinte* and could not undergo corporal punishment. A jury of women was appointed to “inspect the said Mary Taberfield’s condition” and reported “they cannot find that she is ‘*enceinte*,’ neither be they sure she is not.” About a month after this finding Mary was called to the Bar and freely declared “to ye contrary” and submitted herself “to ye mercy of ye King and Governor.”

In 1716, the Justices respite Joan Foucher “until six weeks after she is delivered.”

For several years after the establishment of the County Court at Chester the sentence of imprisonment was rarely imposed. From 1682 to 1689, I find but two cases: in the first, Abraham Buffingall received fourteen days for impugning the magistracy; in the other, a woman was given a year for the offence of adultery.

When a servant committed a larceny, instead

of imprisoning him, the Court not infrequently sentenced him to servitude for a number of years.

Why were the Quaker Justices not satisfied with imprisoning offenders?

Smith finds the answer to this question in the fact that imprisonment was an expensive mode of punishment which the early settlers, most of whom were in straitened circumstances, could not have borne. Hence the law of necessity prevailed over the pleadings of humanity and we find the County Court resorting to corporal punishment.

Somewhat akin to the punishment of being whipped, and almost as humiliating to persons of sensitive natures, was that of standing at the common whipping post and declaring their offence to the people.

For counterfeiting pieces-of-eight and bartering them for goods, Thomas Lasy was sentenced, in 1689, to stand "at ye Public place of Correction att ye Town of Chester two several Court days three hours each day with a paper of his crimes written in Capital letters affixed upon his Brest."

In 1693, Thomas Poe and Sarah Butler were required to do similar penance with an oral announcement. But the written placard ap-

peared again in the same year, when Eleanor, wife of John Clowe, was ordered to wear a paper proclaiming that she stood there "for an example to all others for committing that most wicked and notorious sin of fornication."

A half century afterwards, in a similar case, I find the Attorney-General writing

*At P<sup>r</sup>. Gent. will not offer a Bill of Indict because Thompsons are married.*

on the back of an "Examination" that he would not offer a Bill of Indictment because the persons were married.

For stealing a horse, saddle, bridle and wearing apparel from Jonathan Munrow, in 1703, the Court gave judgment that John Cantwell serve his master and Jonathan Munrow seven years, the time to be equally divided between them.

From 1714 to 1780, punishment at the pillory was exceedingly rare—about twelve cases in all; of which at least two deserve a passing notice. James Castello was charged at the May term of 1755, with "speaking seditious words," and despite his protestations of innocence was found "guilty." At the following February term, Owen

Oberlacker was convicted of a similar offence. Castello escaped the whipping post, otherwise their sentences were much alike. Each was ordered to stand in the pillory for two hours with the words—

*"I stand here for speaking seditious words against the best of Kings"*

affixed to his back.

Of what punishment would Thackeray have been thought worthy had he lived in that day—Thackeray who characterized this “best of kings,” George II, as “a strutting little sultan, who had neither dignity, learning, morals, nor wit; who tainted a great society with a bad example; who in youth, manhood, old age, was gross, low and sensual?”

The mildness of the pillory ceased in 1780. In that year the Justices added a feature that made it as sanguinary as the whipping post.

On August 9th, they sentenced John Bailiff, a convicted horse-thief, “to restore the horse or value thereof to the owner; to be whipped with thirty-nine lashes, well laid on his bare back, at the common whipping post; to stand in the

Indictment for Horse Stealing

Republica v. ~~vs~~ <sup>vs</sup> D. C. Defendant being arraigned  
comes Bailiff, pleads Guilty. Whereupon it is considered  
Witness of Rep. <sup>+</sup> to this court that he pay a fine of ten pounds  
to this Commonwealth, that he restore the  
shoeshirk worn <sup>+</sup> horse or value thereof to the owner and  
be whipped with thirty nine lashes well  
laid on his bare back at the common whipping post to stand  
in the pillory one hour to morrow morning between the hours  
of eight and ten o'clock to have both his ears cut off and nailled  
to the pillory to pay all Costs of prosecution, and stand  
committed till payment, to be imprisoned six months



pillory one hour tomorrow morning between the hours of eight and ten o'clock; *to have both his ears cut off and nail'd to the pillory;* to pay all costs of prosecution and stand committed till payment; to be imprisoned six months."

Similar sentences were imposed upon Christian Gotlibb, John Jeffery Robinson, John Browne, Duncan Hanse, Richard Mansfield, John Sanse, Henry Frane and John Tully.

Tully had just reason for complaint, since punishment at both whipping post and pillory had been abrogated two years before.

In 1692, the Assembly ordered the Badge on the list of punishments. A man wearing a red, blue, or yellow "T" on the outside of his outer garment, in open view, upon the outer part of the left arm "betwixt elbow and shoulder," gave public notice of the fact that he had been juridically found to be a thief. "A Roman T," said the law, "not less than four inches in length each way and an inch in breadth of a different colour from his outer garment."

The selection of the color was left to the Justices. So far as my examination goes, the first offender to be decorated was Benjamin Patterson, in 1702. In August, 1716, John

Eburnethy won distinction in the criminal annals of this county by carrying off both "red" and "blue." Hannah Jonson had anticipated him, however, for two badges without specification of color had been awarded her in May, 1706, with only ten stripes as the price in each case as against Eburnethy's twenty-one.

Notwithstanding this fact the Court showed greater consideration to Eburnethy, by graciously inquiring whether he "did approve of the jury as he was tryed by," and he, making a virtue of necessity, replied most courteously "that he did approve of them very well."

This incident shows a refinement of manners on the part of the Justices that did not manifest itself in 1700, when George Oldfield, who had been charged with the illegal sale of liquor, was called to the Bar and told to produce his license. The record reads: "He having none, the Court ordered him to get one if he can forthwith."

Like Court, like Clerks. A few years after the exchange of courtesies between the Court and Eburnethy, a Clerk did his best to transform an ugly indictment into an affair of gallantry by endorsing on its back the following lines:

*Old Keween Luffall do: with  
trembling air tho' old wi fin  
yl friendly to the faw*

From 1682 to 1718, there are few indictments now on file, and some of them will never again be read. One in particular, that looked historic-

*Billa: Vera*

ally inviting, I attempted to open, but no sooner did I touch it than it crumbled into dust—an old Billa Vera—or as some ancient and

*Bill averey* unlettered foreman would occasionally call it, "Bill averey."

Whom did it accuse? I do not know, nor will you; the only words I could decipher, and those but dimly, were "Quarter Sessions."

What was the jurisdiction of the County Court on its criminal side?

Generally speaking, it had jurisdiction of all breaches of the peace, misdemeanors, and other offences except heinous and enormous crimes, such as witchcraft, treason, murder, and manslaughter, and, after 1693, burglary,

rape, and arson, which were reserved for the Judges of the Provincial Court.

Among the various offences that were tried in the Court of Quarter Sessions from 1682 to 1710, I note the following: Taking a wife contrary to the good and wholesome laws of the Province; having a child too soon after marriage; stealing; “harboring doggs that worries the neighbors Hoggs;” speaking slanderous words; selling beer without license; fornication; adultery; incontinency; incest; keeping disorders in a house on the first day of the week; drunkenness; swearing; extortion; assault and battery; detaining swine; marking a horse that had been marked before; divining by a stick; geomancy; abusing the magistrates generally and particularly for calling Governor Penn a rogue and Justice Blundstone a knave; burglary (concerning which the Provincial Court will have something to say); neglect of roads; remaining in the government contrary to an order of banishment and “importing into the Province of Pennsylvania sundry commodities of the growth, production and manufacture of Europe, which were not bona fide laden or shipped in England, Wales, or the Town of Barewick on the Tweed.”

Those who turn to the Common Pleas side of the Old County Court, unless they be lawyers, or unless—what is most unlikely—they be interested in scandal and defamation, will not linger long over its record. Such actions as, unjustly detaining lands, disparaging a title to land and illegally cutting timber thereon, are not specially inviting. It is true there is also a liberal sprinkling of “debt upon a bond” and “debt upon an account.” With these actions a book-keeper might be concerned, and it is not inconceivable that one or more members of our Historical Society, upon examining a certain action of ejectment, might be induced profitably to employ their leisure in locating the Island of Tynnacum; but for myself, I am resolved not to enter. Four scandal and defamation suits at one sitting of the Court are too many for a peace-loving citizen who has lived for more than half a century in the non-gossiping town of West Chester.

I prefer to pause on the Equitable threshold of this Court. In 1687, among the several queries propounded by the Assembly to the Provincial Council, was the following: “How far the County Quarter Sessions may be

judges of Equity as well as Law; and if after a judgment at law, whether the same Court hath power to resolve itself into a Court of Equity and to mitigate, alter, or reverse the said judgment?"

This question was answered with Delphic ambiguity:

Penn reckoned it among the happy features of Indian life that it was "not perplexed with Chancery suits." He also hoped to prevent lawsuits through three Peacemakers chosen by the County Court.

Three years shattered his dreams and blasted his hopes. Three years demonstrated the inability of the Peacemakers to "end the differences between man and man," and on the 5th day of the 1st week of the 10th month, 1686, a Court of Equity for Chester County was held at Chester by the Justices of the Common Pleas, under the title of Commissioners.

In 1690, an Act was passed providing that the "County Courts shall be Courts of Equity for the hearing and determining of all causes cognizable in the said Court under the value of ten pounds."

In 1701, the "Act for establishing Courts

of Judicature in this Province &c." was passed, enlarging the Equity powers of the Common Pleas Judges, but was repealed in England four years later. "Then commenced," says Rawle, "that long and angry quarrel between the new Governor, the Provincial Council, and the House, in which the establishment of courts of Judicature formed an element."

## VOICES FROM THE JAIL OF 1724

"O little did my mother ken,  
The day she cradled me,  
The lands I was to travel in  
Or the death I was to die."

ANONYMOUS.

THE jail of 1724 was an object of perennial interest. Architects bestowed critical glances upon it; historians paused to inquire its age, and sentimentalists—not always of the Sterne type—looked through its grated doors with moistened eye, even though some peripatetic philosopher sounded in their ears the sober words of Schiller:

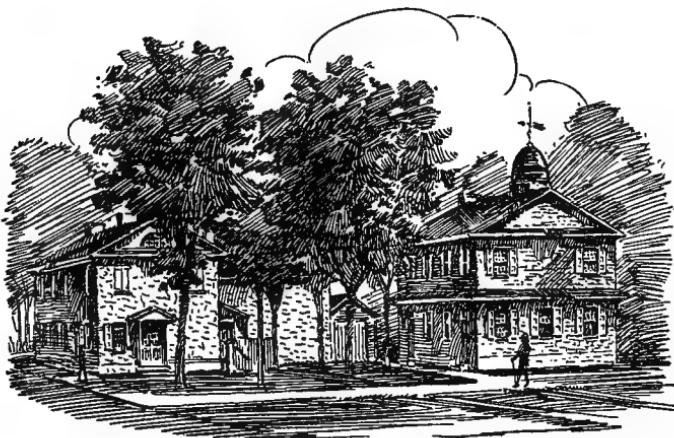
"Vice must ever be followed by Woe,  
The W duly succeeds the V,  
This is the order of A, B, C."

If Woe, however, be not preceded by Vice, but by Misfortune, what then?

While our philosopher formulates his answer to my query, I view with interest a picture of

this tenement of woe and wish that it could speak.

The “Old Common Gaol!” It was the fourth of its line—the fourth and the last in Chester.



Jail and Court House

Among its earliest remembrances was that of a great noise, a hue and cry, a hurrying and skurrying after two brothers that bore the name of Winter, who were arrested, convicted, thrown into one of its dungeons, chained, taken out and hanged for the murder of three Indians.

Some nine months later it heard another hue and cry in pursuit of Francis McGenneys—a short fellow; round-shouldered, a little

humped, with a short neck, long chin, head awry, pretty much pock-stretten; enveloped in a fashionable drugget coat of brownish color, a white diaper dimity jacket, unlined Ozinbrigs trousers, a loose slip riding-coat with large boot cuffs to the sleeves, and a big cape—who was to be searched for from town to town, from county to county, from province to province, as well by horsemen as footmen, and when found was to be carried before one of His Majesty's Justices to be dealt with according to law. All by order of Caleb Cowpland, chief burgess of the borough of Chester in the year 1736.

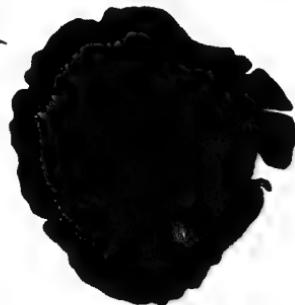
It stood like some grim sentinel when Whitefield passed this way, attended by a hundred and fifty horsemen, and furnished him with illustrations for his Gospel of Deliverance.

How reminiscent this “Bastile” could have been if so inclined. It is true, some of its prisoners' histories we know. With James Fitzpatrick, desperado, the tale of *Sandy Flash* has made us all familiar. Committed to its care, it held him fast, and when he filed its chains and sought to free himself, it thwarted his attempts and gave him to the hangman.



Cheston County in the  
Province of Pennsylvania

Whereas Complaint hath been made unto me Charles  
Coulpland Esq; That 23 wages of the Burrough of Chester  
and one of his Majesties Justices of the Peace within the said  
County of Chester by Name & Seal of the said Burrough of Chester  
that upon Monday night being the sixteenth day of this instant  
August 1756 he had stole from her Amide by a Gray Horse Branded on  
the near Buttstock with the letters D II, the two hind foot to the  
fair fore foot white colour the Hooft's a few white hairs like unto  
a star on his forehead, some white Saddle spots on his Back —  
about nine or ten years of age, places a little, & that she hath  
manifest cause of suspicion of one Francis M<sup>r</sup> Queney, he is  
a short fellow, round Shouldered & something hump'd on the right  
Shoulder, he wears a Cap on his Head, a Iron-Neck'd, he wears a  
head Cury pretty much poach'd either along him, he wears a  
fashionable Dugget Coat of Brownish Colour, a white Diaper  
Diminutie Jacket, underlaid with a Kings Robe, a dove Shipwinding  
Coat with large Boot Cutts to the Stewes, a large Cape, about  
Twenty Eight years of age —



If those are to require you and Company of you to make search within your  
Several Precincts for the Said franchises Mr: Dennis and afft to make hue &  
Cry after him from Town to Town from County to County and from Province  
to Province and that also will be done as soon as footmen and if you shall  
find him the Said franchises Mr: Dennis that then you carry him before some  
one of his Majesties Justices of the peace within the County in which  
Province where he shall be taken to be dealt with according to Law  
and we do desire all Magistrates and other his Majesties Ministers and  
Officers in the Neighboring Provinces and Colonies to inform thereof —  
Presentments may come to be aiding and abetting in apprehending the Said  
franchise Mr: Dennis as who would be ready to serve them upon the like  
occasion Mr: Justice witness whereof I have hereunto set my hand and  
Signed the Seal of the Said County to be hereto affixed at Chester office  
the Sixteenth day of August anno Domini 1736

John Cuypland

To all Sheriffs, Coroners, Constables,  
and all others his Majesties Officers  
and Ministers whatsoever within the  
Province of Pennsylvania and elsewhere  
so whome the Execution of these presents  
may come —

20



But of Elizabeth Wilson we should willingly have heard it tell each sad detail. In prison dampness this poor woman waited for "the mercy man denied her"—waited, until she saw each line that Hope had written on her cell grow dim—waited, until the sheriff brought his cart and took her to the hangman's lot.

In certain miscellaneous papers—old petitions, I find some sad remembrances of other days. How pitiful, the cries of these petitioners and alas! how vain.

Far back in 1728 I hear the voice of Margaret Conor, who "hath lately been committed to this County Goal by Thomas Moore." Margaret pleads that the Court in its wisdom may provide some remedy for her: "Your petitioner being now Margrit Conor great with child by the said Thomas Moore and *having nothing in Goal to Keep me Warm, but Exposed to live on ye Cold boards* which will Very much Indanger the Life of your Petitioner as well as the Child."

The Court opens its ear to her cry of distress, and in the following year compassionately orders the sheriff to sell her for any term

not to exceed three years, and out of the moneys received to pay for "her diet and sundry expenses."

But, sometimes, bidders are not plentiful. In 1737, John Watson informs the Justices

John Watson

that "he has now Been Confined these Twelve months in the Comon Goal &

has Undergone the Punishment that your Worships inflicted on me & my fine & Fees Yet to Pay. Your honours adjudged me out a Servant last Court for four Years to pay the said fine & fees but nobody as yet will Take me out the Charges &c. being to high therefore let me beg your honours will take my starving Condition into consideration & *Let me be Sold to the highest Bidder.*"

In the same year, and the same month, John Fletcher entreats his Majesty's Justices to release him from "this Dismall Place."

A few months later, Stephen Hoskins, a luckless debtor "kept out of his Just Rite," prays the Justices "to Examin The Dockit where you will find a much fairer Judgment Entred for what your patishoner decklared for

Than the Judgment your Patishoner is Confin'd for," and points out a remedy if the Justices "*will fal into the Good practice of Philadelphia*, That where it so hapen That any man in Custody should fal short and the Cort knowing that he has aney bonds Bills or other Efects—the Cort will make a Balance so that the party may not be confined *Stephen Hopkins* much more."

But perhaps the saddest case is that of a woman afflicted with an odious distemper:

"My servitude will not enable me to pay my fine to his Excellency the Governour nor pay the Cost and Expenses which I have Been in Prison for six months and upwards, *I may ley and Perish* Before any will Relive me therefore I humbly Implore your worships will be pleased to order me to be Discharged after suffering ye Corporal Punishment Inflicted on me by yr Command."

Inconvenient and annoying are these petitions to the Justices, also unreasonable. If debtors would be satisfied with the quarters assigned them by law; if women with offensive and incurable diseases would but "ley and

Perish" patiently, more time could be given by the Court to investigating offences against its dignity.

To the poor petitioners the hearts of the Judges seem most obdurate.

Perhaps Whitefield's preaching will soften them. No! Whitefield comes and goes, but the old conditions at the jail remain unchanged. Alas! the Justices are more conversant with Jude's verse on Dignitaries than with Paul's chapter on Charity.

The cries continue and the starved figures that utter them "limp at the heels of the Justices' consciences." The prison at Chester is a cheerless place, with its dampness and dungeons, and besides, if your Majesty's Justices please, petitions sometimes remain to affect posterity's opinion of the magistracy to whom they were presented and, moreover, posterity cannot be punished at the whipping post.

For these or other reasons the Justices resolve—the Commissioners with them—to floor the two dungeons on the east side, and, to their credit, they do more: they plaster and seal certain portions of the prison; they

even add some paint; they pay £10 for plank and more than £5 for spikes. If the expenditures are not large, let it be remembered that some money must be reserved for the purchase of new whips and the mending of old ones, and some is expended in that way as the records of 1742 will show.

His Majesty's Justices think that no reasonable prisoner will object to the jail now, and yet one Robert Reed does do this very thing and humbly sheweth that in the year of Grace 1746-7 he "is confined in Goale under Execution and is almost *in a Starving Condition*," and, likewise, his wife and child "att Sixteen Miles Distance having nothing at all to Suport him or his poor helpless family who has Neither house Nor home to put their head in but is behoulding to their good Neighbors and does not now where to gow or what to do."

A "Cold  
Prison" *Isaac Marshall*  
Isaac Min-  
shall calls it more than twenty years later, "a  
Cold Prison" into which he, a poor debtor, is  
in "Dayly fear of being Cast."

In this dreary waste of misery is one little

oasis on which I am sure my readers will look with pleasure. Wherever this book goes may the name of John Parry be held in grateful remembrance.

November 1737  
Indictment against David Davis  
Ignoramus  
John Parry Assumes my fees &c  
Forgave my fees

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## COURT-HOUSES OF CHESTER ALSO ATTORNEYS

"Law and Justice cannot have its perfect course without such houses for their distribution."

GRAND JURY OF 1701.—*Report.*

A HISTORICAL traveller who would know something about the Houses of Justice in Upland and Chester must stop at five places: Neeles Laerson's Inn, the House of Defence, the Court-house of 1684, the Court-house of 1694, and the Court-house of 1724. Having reached the last building, he may sit down and rest; perchance may conjure up the shades of advocates and judges whose personalities are now forgotten and whose names are following fast upon their personalities.

Neeles Laerson's Inn is believed to have been located on Edgmont Avenue north of the present Second Street; but the truth is that the quarrelsome nature of the Swedish landlord is better known by most historians than the exact location of his inn.

When Justice Cock and his five associates met at "Upland in Delowar Riuer," on November 14, 1676, to organize their Court, the doors of this hostelry opened to receive them. It had furnished quarters for a former Court, whose records have as yet been undiscovered, and it was accepted by these recently appointed Justices because there was "no other accommodation for ye Court."

The inconvenience of holding a court in a public house, however, soon grew to be intolerable. In 1677, the Justices ordered Captain Hans Jergen "to fitt up and finish ye house of defence att Upland fitt for the Court to sitt in against ye next Court."

The House of Defence—a rectangular building constructed of logs—stood on the east side of Edgmont Avenue, about eighty-four feet from the present Second Street, and was fourteen by fifteen feet in dimensions.

Laerson was irritated by the removal of the Court, and started at once to make the entrance into the House of Defence as inconvenient for the public as possible. The early settlers travelled almost wholly by water. It was very essential, therefore, as Ashmead remarks, "that there should be free access from

Collier 29<sup>th</sup> May 1923

M. J. P. the Grand Jury for the County  
of Chester D. M. P. etc., the Mystery of  
a Mrs. Count Lough

John Berry Stansman

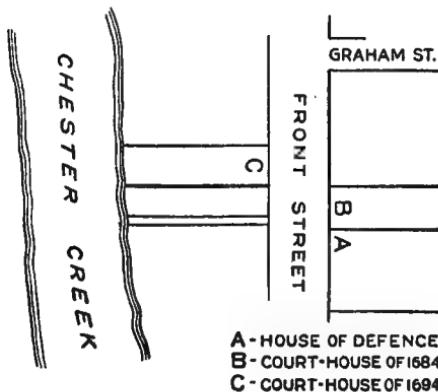


the creek to the public buildings." Besides, the Court-house was used for "the sellerage of goods." But Laerson was pugnacious, and arrayed himself against both Court and Public. His obstructive tactics, however, soon ended in failure.

At the March Court of 1679, the Court ordered him "to make or Leave a lane or street from Upland Creeke to ye House of Defence or Country House" by the next Court or be fined.

There can be little room for doubting that the House of Defence was the place referred to at a Meeting of Friends at Chester in 1682—before the arrival of the Proprietary—where it was agreed, "to hold a meeting every first day of the week at the Court-house at Chester."

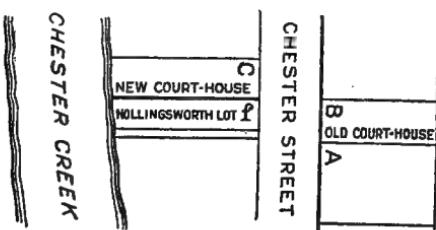
The House of Defence, having served its purpose, gave way in turn to the Court-house of 1684.



Where was this court-house located? We are now upon debatable ground.

If you accept Smith as a guide, he will give you a draft showing you the relative locations of the House of Defence, the Court-house of 1684 and its successor of 1694.

The deed from Robert Wade and wife to Henry Hollingsworth describes the lot which it conveys as "*directly opposite to the old Court House*



fronting the said Chester street and running along the said street in breadth

twenty feet and in length back from the said street along *by the south side of the newly erected* Court-House to low water mark and also the free liberty of Ingress," then a passage of six feet broad lying on the south of the premises from the aforesaid street to the Creek.

If you prefer Martin and Ashmead, you must cross to the west side of Edgmont Avenue to view the site of the Court-house of 1684, and, having seen it, these historians will show you the foundation wall of the Court-house of 1694, and will even measure the dis-

tance from this wall to the southwest corner of Edgmont Avenue and Third Street—two hundred and fifty-six feet, six inches.

These early Court-houses saw few practitioners. Attorneys-in-fact were plentiful enough, but attorneys-at-law were rare, so rare that in 1709 there were but four in the Province. At least, Francis Daniel Pastorius made that allegation in his petition to Council on March 1, 1708-09. "Sprogel," said he, "hath fee'd or retain'd the four known lawyers of this Province, in order to deprive your Petitr., of all advice in Law, wch sufficiently argues his cause to be none of ye best."

More than thirty years before, in 1677, the Upland Court had published a resolution of the Governor and Council that "pleading attorneys bee no longer allowed to practize in ye Government but for ye: depending causes."

The first attorneys to make their appearance in a civil case in the County Court at Chester were John White and Abraham Mann: Mann represented the plaintiff, Arnoldus Delagrange, "Heire to Tynnacum Island," and White looked after the interests of Otto Ernst Cock, the defendant. This case was tried in 1683.

The first attorney to make his appearance in a criminal case was Charles Pickering. In 1686, he pleaded "as attorney for ye King" against Edward Hurlbert Taylor, charged with "stealing." The evil results of his efforts showed themselves in the jury's verdict. They acquitted the defendant, but at the same time found him "guilty of suspicious circumstances in relation to the indictment."

Miner, counterfeiter, "attorney for ye King," Pickering was one of the most romantic figures of his day.

He had crossed the ocean with Penn and wandered up the Schuylkill River in search for treasure. After a long and tiresome journey through the forest, he lay down on the bank of the stream now called by his name, and dreamed his dream of silver. Dreamed, did I say? No, he saw and handled the shining particles washed from the neighboring hills, and, having assured himself of their value, hastened to Philadelphia; obtained the tract from Penn; returned; imparted the secret to Tinker, a miner; dug a cave; collected a mass of the supposed precious metal, and transported it to Europe for examination. Finis!

From mining, Pickering turned to coining,

in which undertaking he was not altogether unsuccessful, until the Provincial Council interfered with his private minting of "Spanish Bits and Boston money" by issuing a warrant for his arrest. The jury who tried the case against him and his assistant Buckley, convicted both. For this high misdemeanor the Governor sentenced them to make full satisfaction to every person who should within a month bring in any of the "Counterfitt Coyne," and also imposed a fine of forty pounds "toward ye building of a Courthouse."

Pennypacker suggests that Pickering's offence was probably "nothing more than an attempt to supply the colony with an irregular but an intrinsically valuable medium of exchange." It was followed by no social condemnation. In privilege and freedom, the Council declared in 1685, that Pickering stood in "Equal Capacity" with the other colonists.

At the time that Pickering pleaded "for ye King," David Lloyd was Attorney-General. What manner of man was Lloyd?

The sketch by Rev. Mr. Ross, in 1714, is that of an avaricious and powerful Quaker, plowing and sowing the glebe-lands "irreligiously sold to him by some Swedes under the

name of church-wardens." It is by no means a pleasing picture, but it resembles very closely a drawing of Lloyd by Jasper Yeates some eighteen years before, in which he is made to look much like a Syrian salesman displaying his merchandise. "A small parcel of land at Chester, called the Green, which lyes commodious for building a town, fronting on Chester Creek and Delaware River with a market place laid out and streets as appears by a map. Please allow and confirm this model," implores Lloyd. "Really church land," cries Yeates, "& appropriated by a donation to yt use forever."

As an attorney Lloyd was learned, shrewd, and technical: willing to try a case on its merits when he represented the meritorious side, but insisting most vehemently on technicalities when he believed that technicalities alone could avail him. In his action against James Sanderlands, in 1690, through his mouth-piece White, he alleged that, "ye jury was not Lawfully summoned soo would not come to tryall." The defendant craved a non-suit, and "it being referred to ye Court" it is gratifying to read, "ye court granted the same."

Lloyd's legal knowledge was higher in quality



TENCH FRANCIS



than his ethics. When Sprogel undertook to "corner" the Bar, "the principal agent and contriver" of the plot was found to be Lloyd.

In 1710 Lloyd moved to Chester and was the first lawyer to reside in Chester County. On the tract of land conveyed to him by the widow and sons of Neeles Laerson he built a stately mansion, lived sumptuously, and kept a retinue of servants.

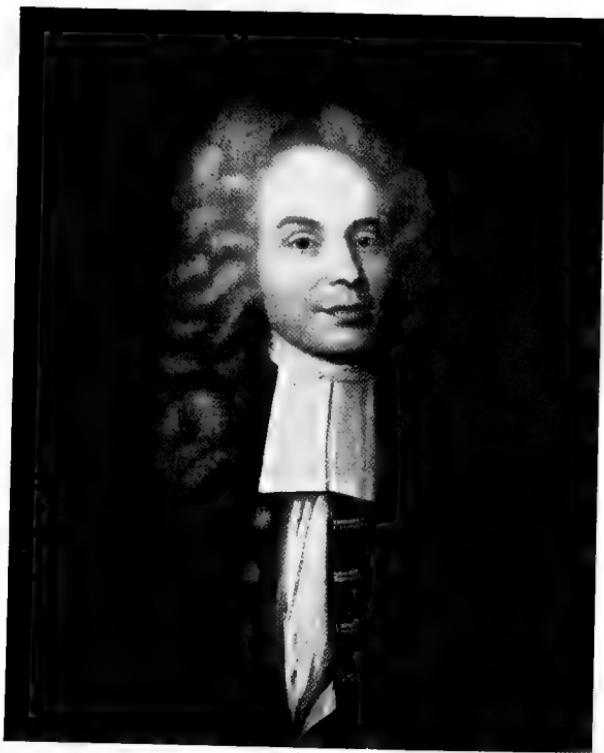


As Chief Justice of the Supreme Court he saw no reason for hiding himself from his fellows, but entertained largely and rode over the country in a four-wheeled carriage drawn by two horses.

Ashmead calls him "the father of the Bar of Pennsylvania," and accords him the credit of assimilating the crude legislation of the early period of our colonial history into a system of jurisprudence, and of drafting and revising the acts which moulded our tribunals of justice into form, and invested them with clearly defined powers and jurisdiction.

Lavish as this praise is, most students of his period will be inclined to accept it (with certain modifications) as just; but admirers of Lloyd must write his name, as a lawyer, second to that of Andrew Hamilton. Hamilton was "the only American lawyer of his generation who enjoyed an international reputation." In the litigation over the Maryland boundary line, he represented Pennsylvania as Attorney-General; in the contest over Penn's will, he appeared in the High Court of Chancery as counsel for the young Proprietors. Planner and supervisor of Independence Hall, successful defender of Peter Zenger, and vigorous asserter of the liberty of the press, it is to be regretted that the part played by him in the suppression of the Court of Chancery "shows a willingness," as Loyd says, "to sacrifice the science of jurisprudence to the exigencies of politics."

Hamilton was Attorney-General and Lloyd was Chief Justice when Hugh Pugh and Lazarus Thomas were tried at Chester, on April 17, 1718, for the murder of Jonathan Hayes—one of His Majesty's Justices. This was the first trial for homicide in Chester County, and resulted in the conviction of both prisoners. The condemned men petitioned the Governor



ANDREW HAMILTON



for a reprieve until the pleasure of the King could be known, and assigned among other legal errors the following:

"Because seventeen of the Grand Inquest who found the bill of Indictment against them and eight of the Petty Jury who found them guilty were Quakers or Reputed Quakers and were qualified no otherwise than by an affirmacon." *And w. Hamilton*

The petition for a reprieve was rejected; but May 19, twenty-two days after their execution, the sanguinary criminal law of England was adopted in the Province in exchange for the right to use affirmations.

In 1723 the Grand Jury presented the necessity of a new Court-house; in 1724 it was built.

Thirteen years later its interior was in a wretched condition. "Said Court-house," writes Joseph Paken, "was at the Public Expense Furnished with Tables, Chairs, fire-shovels, Tongs, Doggs, fenders, as many as reasonably adjudged Necessary. But whoever the Person charge the same was Committed to It is Apparent to Every Person that will make use of his Eyes, that the Doors are most Commonly Left Open for Horses and Cattle to go in and out at Pleasure, the Furniture broke and Ex-

ceedingly Diminished and the place made a Common Stage whereby Rude people break the windows, Treads down Ceiling and Commits many Disorders which if not timely prevented must end in the Ruin thereof."

Let us leave the building to the mercy of the Commissioners, and take a sweeping glance at some of the attorneys who practised here.

If we look through Richard Peters's glasses, in 1749, we shall see no one at the Bar in general worth looking at except John Moland and Tench Francis. As for the others, "they are persons," says he, "of no knowledge, I had almost said of no principle."

This would not be very complimentary to Joseph Groyden were he living, but Groyden is dead and John Kinsey has become Chief Justice.

Seventy-  
*Tench Francis* five years  
later, Chief  
Justive Tilghman, looking backwards, writes: "It was a long time before she (Pennsylvania) possessed lawyers of eminence. There were never wanting men of strong minds, well able to conduct the business of the courts without much regard to form. Such in particular was Andrew Hamilton, the immediate predecessor of Mr.





BENJAMIN CHEW

Francis. But Mr. Francis appears to have been the first of our lawyers who mastered the technical difficulties of the profession. His precedents of pleadings have been handed down to the present day, and his Common Pleas book, which is in my possession, is an evidence of his great industry and accuracy."

In looking at this portrait it is well to remember that Francis was the maternal grandfather of the Chief Justice.

As Attorney-General from 1741 to 1755, Francis represented the King in two murder cases that were tried at Chester. In the latter year he was succeeded by Benjamin Chew. Chew had studied law at the Middle Temple *Benjamin Chew* at London and also in Hamilton's office. His promotion was rapid. In 1754 he was admitted to the Bar; in 1755 he was appointed Attorney-General.

I should rather look at Mr. Chew, as Chief Justice of the Province, entertaining Washington, Adams, and certain gentlemen from Virginia at dinner in his old colonial mansion, with turtle and every other thing upon his table, including sweetmeats of twenty sorts, whipped sillabubs and floating islands; but

the necessities of this book require that I view him as Attorney-General, discharging his duties in the little market-town of Chester, containing fifty or sixty dwellings, a court-house, and a jail.

As such officer we find him appearing there at the Quarter Sessions and also at a "Special Court" for the trial of negroes. So far as the records show it was the first of its kind under the Act of 1705. The prisoner was Negro Abraham Johnson, a slave of Humphrey Marshall, arraigned on an information exhibited by the Attorney-General, charging the defendant with murdering a slave of Andrew Boyd.



Joseph Galloway was assigned to defend him. After hearing the evidence the Court found him "not guilty of murder but—guilty of homicide *se defens.*" Johnson rejoiced in his liberty! No, in accordance with the practice of that day he was held for the payment of costs.

It is a curious fact, noted by Loyd, that Hamilton, Francis, Chew, and the Tilghmans all came from Maryland.



JOSEPH GALLOWAY



## THE REMOVAL OF THE COUNTY SEAT

"Oh, may Jack Hannum quickly die,  
And die in grievous pain,  
Be sent into eternity,  
That mamma may remain!

May all his projects fail likewise,  
That we may live again,  
And everyone rolled up his eyes  
And cried aloud, 'Amen!'"

HICKMAN, *Chester's Mother.*

THE Cross-roads developed into the Turk's Head before the Revolutionary War, but the Turk's Head did not become the County Seat for several years after peace had been made with England.

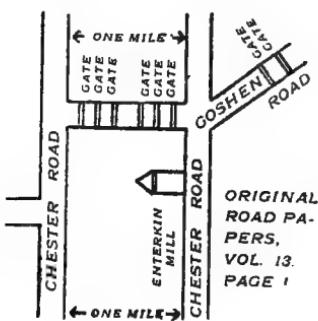
The centrality of the Turk's Head was patent to all. Equally obvious to many, was the necessity for a change in the county seat. So momentous, however, were the issues involved in the struggle for independence that the "scheme" (to use the infelicitous word of a Delaware County historian) was permitted to slumber by its most ardent friends.

In 1766, an earnest effort was made for

legislative authority to remove the County Seat from Chester to a more central location.

Situated, as the Borough of Chester was, on the extreme southeastern edge of the county, it was admittedly a serious matter for residents of such remote townships as Coventry, Nantmeal, or Nottingham to attend Court as jurors, suitors, or witnesses. Their attendance involved no inconsiderable labor in going and very often unpleasant surprises in returning.

Some of the roads were little more than bridle-paths, both crooked and narrow; so



narrow at times, that one travelling on horseback could hardly pass another riding from a mill with a bag of feed. Many of the wider roads were frequently incumbered with logs, stumps, and

great stones; not a few were obstructed with gates, and such roads as were on sufferance were often shifted from place to place, neither supervisor nor any other person venturing to mend them. To such a pass had it come, that travellers setting out in the morn-

ing from some of the back settlements never knew by what crooked route they might be compelled to return at night.

These intolerable conditions were set forth in their petition to the Legislature and a touch of pathos was given to the picture by adding: "Many poor widows are obliged to travel thirty or forty miles for letters of administration and are put to much trouble in attending Orphans Court at so great a distance."

Strange as it may seem, even this appeal failed to move the obdurate hearts of the legislators, and it was not until 1780 that William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, or any four of them, were authorized to purchase a piece of land situated in some convenient place in the county; to build a new court-house and prison thereon, and to sell the old building.

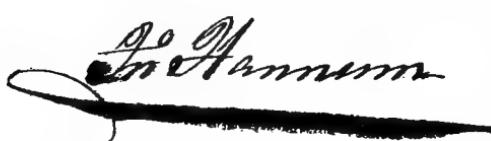
In pursuance of their authority these commissioners purchased a lot of land in East Caln Township from Rosanna Sheward, but for some cause nothing further was done by them.

On May 22, 1784, a supplement to the original Act of Assembly was passed, substituting John Hannum, Isaac Taylor, and

John Jacobs for the former Commissioners. By the wording of this Act, the Commissioners were restrained from erecting the new county buildings at a greater distance than one mile and a half from the Turk's Head tavern.

Some historians have asserted that this restraining clause was inserted through the influence of Colonel Hannum, so that the buildings might be erected on his land in the adjoining township of East Bradford, but the evidence negatives the assertion.

Colonel Hannum was familiar with the county west of the Cross-roads, and must have known that the distance from the Turk's Head Tavern to his premises in East Bradford was greater than a mile and a half. It cannot be denied, however, that the Colonel had more or less of a speculative bent, for he was

A handwritten signature in cursive script, appearing to read "G. H. Hannum". The signature is written over a horizontal line, with a flourish extending to the left.

careful to  
secure some  
land ad-  
joining the

court-house lot about the time that its purchase was consummated for the county.

As soon as the lot was bought for the court-house and prison, the commissioners started to build; but despite the most strenuous efforts on

their part the walls of the court-house were not quite completed when winter set in and suspended the labors of the workmen.

Winter, however, did not suspend the activities of the anti-removalists, but rather stimulated them. Before the weather permitted a renewal of building, they secured the suspension of the Act of Assembly authorizing the erection of the county buildings and awaited results. Results came quickly. Hardly had the Suspension Act been passed until the laborers returned and energetically resumed their work.

Chagrined that the Suspension Act had not checked the building operations, the inhabitants of Chester determined to demolish the work already done and thus remove all pretexts for going on with it at a future day. They mustered their forces, appointed Major John Harper, of Revolutionary fame, commander, provided themselves with a field piece and a barrel of whisky, and took up the line of march toward the Turk's Head.

Preparations were immediately made for their reception, Colonel Hannum being particularly active. "He requested Colonel Isaac Taylor and Mr. Marshall to bring in what men they could collect and began himself to procure

arms and prepare cartridges. Grog and rations were freely distributed and a pretty respectable force was soon upon the ground. The windows of the court-house were boarded upon each side

*Wm. Taylor*

and the space between filled with stones —loopholes being left for

the musketry. Each man had his station assigned him; Marshall and Taylor commanded in the upper story, Underwood and Patton below, while Colonel Hannum had the direction of the whole. All things were arranged for a stout resistance.

"The non-removalists, having passed the night at the 'Gen. Greene,' made their appearance near the Turk's Head early in the morning and took their ground about two hundred yards southeast of the present Quaker meeting-house. Here they planted their cannon and made preparations for the attack. They seemed, however, when everything was ready, still reluctant to proceed to extremities, and having remained several hours in a hostile position an accommodation was effected between the parties by the intervention of some pacific people, who used their endeavors to prevent

the effusion of blood. To the non-removalists was conceded the liberty of inspecting the defences that had been prepared by their opponents, on condition that they should do them no injury, and they on their part agreed to abandon their design and to return peaceably to their homes. The cannon that had been pointed against the walls was turned in another direction and fired in celebration of the treaty. Colonel Hannum then directed his men to leave the court-house, and having formed in a line a short distance to the right, to ground their arms and wait till the other party should have finished their visit to the building.

"Here an act of indiscretion had nearly brought on a renewal of hostilities; for one of Major Harper's men, having entered the fort, struck down the flag which their opponents had raised upon the walls. Highly incensed at this treatment of their standard the removalists snatched up their arms and were with difficulty prevented from firing upon the Major and his companions. Some exertion, however, on the part of the leaders allayed the irritation of the men and the parties at length separated amicably without loss of blood or limb."

The history of this memorable expedition from which I have quoted so copiously was written by Joseph J. Lewis, a distinguished member of the Chester County Bar, who was born about fourteen years after the event which he recounts. His recital reads like a page from Gibbon's *Decline and Fall of the Roman Empire*. Some persons have found it even more interesting than the strife between the green and blue factions of the circus as portrayed by that eminent historian. "There is as much movement," say they, "with more noise and less bloodshed."

The fitness of West Chester for a county seat was bitterly disputed by many inhabitants in the southeastern end. Here and there not a few could be found who were quite willing to adopt the language of one of its most virulent opponents, who described it as "That notorious place vulgarly called the Turk's Head (by some West Chester), a place as unfit for the general convenience and much more so than any one spot that might be pointed out within ten miles square of the above described place except toward the New Castle line."

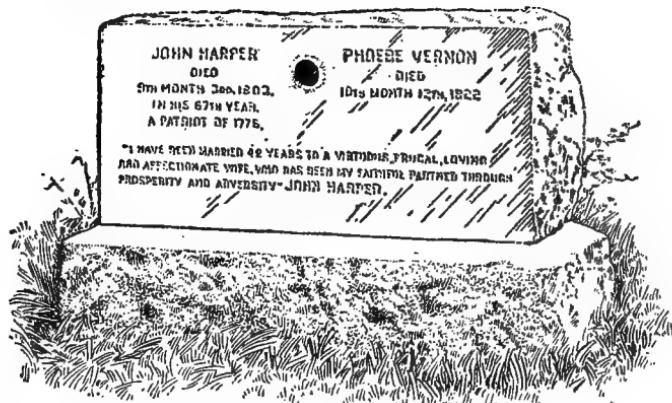
The Legislature, however, was unaffected by

such frantic declarations, and on the 18th of March, 1786, the Suspension Act was repealed by one which bears the following curiously tautological title: "An Act to repeal an Act entitled an Act to suspend an Act of General Assembly of the Commonwealth entitled a supplement to an Act entitled an Act to enable William Clingan, etc.

"How delightfully," observes *A Stranger in Chester County*, "the word *Act* must have reiterated its vibrations upon the ears of the members when the clerk of the Assembly read over the title for their information. It has the true *rub-a-dub* monotony of a beaten drum. This repealing law settled the controversy. The three Commissioners proceeded to finish the public buildings, and on the 25th of September, 1786, a law was passed empowering the Sheriff of Chester County—William Gibbons, Esquire—to remove the prisoners from the old gaol in the town of Chester to the new gaol in Goshen township, in said county and to indemnify him for the same. The good people of Old Chester, especially those who profited by having the seat of justice there, saw with infinite regret the sources of their living dried up, and the poetical wags

in the vicinity of the Turk's Head indulged their humor by invoking the rustic muses and manufacturing sarcastic ballads at the expense of their late antagonists . . .

"The West Chester people now became ambitious that their Turk's Head establishment in the township of Goshen should be dignified in a manner becoming a seat of justice, and they accordingly, on the 30th of March, 1788, obtained a law for erecting a certain district of the county in which the courthouse in Chester County stands into a County Town. It was, no doubt, exceedingly gratifying to them to see a 'Town' thus erected to their hands by an Act of Assembly, as it was so much easier done than it could have been by building."



## THE FIRST TRIUMVIRATE AND THE COURT-HOUSE LOT

"We didn't wish to sell the lots off right away to any loafer as might bid, but had concluded to reserve them for aristocrats of nature."

CHARLES DICKENS, *Martin Chuzzlewit.*

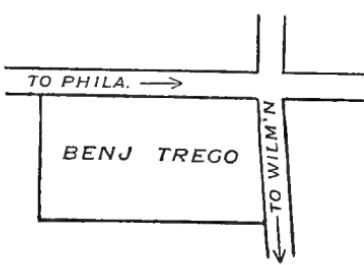
THE removal of the county seat from Chester, in fact the Act of May 23, 1784, providing for its location near the Turk's Head, quickened real estate business at the Cross-roads wonderfully. Large tracts were divided, corner lots were laid out, and in a few years the appearance of the place was completely changed.

About six weeks before the passage of this Act of Assembly a conference took place at one of the houses at the Cross-roads and the first real estate triumvirate was formed by Benjamin Trego, Isaiah Matlack, and John Patton.

Benjamin Trego, the leading spirit, was of French extraction. His grandparents had fled

from the tyranny of Louis XIV and had found shelter among the Quakers of Pennsylvania. Peter Trego and his wife were among the early settlers of Middletown Township. Their son William became an inn-keeper in Goshen Township, where, in 1730, Benjamin was born. About his infancy and early manhood little is known, but when approaching his fortieth year he showed rare foresight in purchasing one hundred acres of land at the Cross-roads from John Haines, and now he was interested in disposing of it so as to help the town and incidentally to put money in his purse.

Trego was not avaricious, his conduct was that of a public-spirited citizen and his grants



to his son were the expression of his "Natural Love and Effection" as stated in his deeds. Among the dwellers at the Cross-

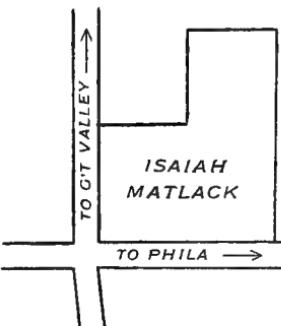
roads Trego had the distinction of having been married thrice. Of these wives Bathsheba is well known (to title searchers at least) by the frequent appearance of her name upon convey-

ances and by its absence from one important paper as well.

Bathsheba married Trego in 1771, about two years after he purchased the tract from Haines.

Now, Bathsheba, at the time she married Trego, was a widow.

Isaiah Matlack, the second member of the triumvirate, was a farmer and at this time was almost sixty years of age. His mother was a daughter of John Haines, the first, who left his Merry England in the latter part of the Seventeenth Century and came to New Jersey. A sober, second thought brought him across the Delaware into Pennsylvania, where he remained until his death.



His daughter Rebecca married Joseph Matlack in New Jersey; but in 1729, one year after her father's death, she came to Goshen and settled on the farm which he had devised to her.

Upon the death of Joseph Matlack, Isaiah, his first born, received a fair share of his estate, and in 1768, when Phineas Eachus failed, added to his holdings by purchasing the Eachus farm

of one hundred and fifty acres north of the Philadelphia road. Since then, sixteen years had passed and in Isaiah's eyes the time for its conversion into town lots had come.

The third triumvir, John Patton, was a captain of light horse under Colonel Hannum; but, like most men of note, his pedigree is uncertain. He was active, vigilant, courageous and in the "Late Tryale for Liberty" had rendered valiant service in the Continental army. His subsequent labors in the removal of the county-seat from Chester to the Cross-roads were so strenuous, that Dr. William Darlington in reviewing that memorable move-

ment assigns him a place second only to Colonel Hannum.

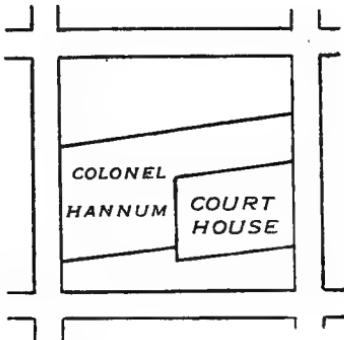
A week before the triumvirs met Patton had pur-

chased from John Hoopes the Southeasterly tract at the Cross-roads, extending more than a half mile along the Philadelphia road, with a quarter of a mile of frontage on the Wilmington road.

The outcome of their meeting was the following agreement:

We the subscribers Promise and agree to have  
To be laid out at the Cross Roads near the sign of the Turks  
Head Tavern in the Township of goshen agreeable to the  
within Enexed plan and we further agree to grant and Confirm  
To the Commissioners apointed to Build a Court-house and  
goal one Acre of Land in the Centre of said Plan for the use  
of the County to Erect the necessary Buildings thereon and  
we Do further agree that the Remainingd Lots agreeable  
To said Plan shall be Valued By men for that Purpose to  
Be appointed and that we will convey the said Lots to such  
Person or Persons that shall Tender and pay the Valuation aforesd  
Allways Excepting for Each of our Selves thereof Lots out of  
Each of our Parts as we shall Choose witness our hands this  
Ninth Day of April 1784.

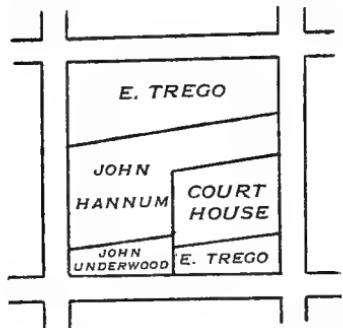
BENJAMIN TREGO.  
ISAIAH MATLACK.  
JOHN PATTON.



Benjamin Trego owned the square bounded by Gay, Church, High, and South (Market) streets.

True to his agreement, his first conveyance was a lot fronting on High street for a court-house and jail. On May 1, 1784, he deeded this central lot to John Hannum, Isaac Taylor, and John Jacobs, commissioners appointed by the legislature.

On June 25, of the same year, he sold an adjacent lot to Colonel John Hannum. Two



days later he disposed of a lot on the corner of Church and South streets to John Underwood. On July 19 he gave all his land in this square north of the Hannum lot to his son Emmor, who,

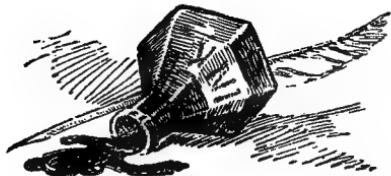
on August 26, also received from his father the lot immediately south of the court-house lot.

Bathsheba's name is missing from the deed to the court-house lot, and its absence has given rise to many conjectures.

Some think she was opposed to the location of the jail at the Cross-roads. Proximity to prisoners is not desirable, and yet prisoners, for the most part, are quiet, or if noisy are instantly restrained.

But the voice of the advocate neither judge nor jury can restrain. Even in these days of physical effeminacy there are practitioners who, when facts are few and the wind is right, may be heard far beyond the limits of the Trego Square.

Did Bathsheba have a premonition? Did she instinctively anticipate this condition in the near future? These questions cannot be answered with certainty. The one thing certain is, *Bathsheba did not sign.*



## THE BENCH OF JUSTICE

"When we name him, says Tradition,  
He was—once upon a time."

FAUST, *Taylor's Translation.*

BEDS of justice? Chester County never had any. The best that she can offer in the way of judicial antiques is a *bench of justice*.



Of all the articles exhibited at West Chester's Centennial in

1899, none was more interesting than this old relic. When it was made, or by whom, no one knows. It was occupied by the justices in Chester and came with the records to West Chester.

On September 25, 1786, when Court opened in the new county-seat, the old bench was set in an honorable position to receive the duly commissioned dispensers of justice. Ten of

them made their appearance: William Clingan, William Heslet, John Bartholomew, Philip Scott, Isaac Taylor, John Ralston, Joseph Luckey, Thomas Cheyney, Thomas Levis, and Richard Hill Morris.

The names of most of these justices have faded into comparative oblivion, and their presences have become shadowy and impersonal. Their

*William Heslet* signatures may still be

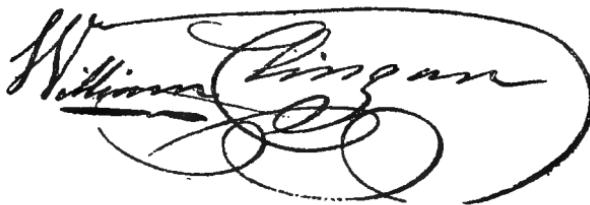
read on the recognizances they took, but unfortunately signatures give one little information of the men who made them. It is a matter of common note that some of the smallest men—physically, mentally, morally and financially—use the largest signatures.

Unremembered as these justices are today, many of them in their generation were

*Richd. Morris*  
widely known and a few of them at least were fully qualified for their duties by study and experience. What if narrow-minded practi-

tioners complained that legal technicalities received scanty consideration; what if such rules as *unum comma evertit totum placitum* did not obtain official recognition; within the narrow circle of their jurisdiction they meted out substantial justice, and litigants were apparently as well satisfied then as now.

Which of these justices, and how many of them, sat upon this bench at the opening session is uncertain. As presiding justice William Clingan undoubtedly took the middle position. Justice Clingan was no unknown or obscure man. As early as 1757, he had received a commission as justice of the peace and continued to hold the office by successive appointments until the opening of court in West Chester.



None of his brethren begrudged him the seat of honor on the old bench. He had served his country alike in the Continental Congress and in the congress which adopted the Articles of

Confederation. When the government resolved to borrow twenty million dollars Justice Clin-gan was appointed an agent to receive subscriptions.

So far as I have been able to discover, his highest ambition as congressman and justice was to do his work thoroughly according to his view of duty and to ask God's blessing upon it, without craving overmuch the applause of men.

Neither his congressional record nor his judicial standing, however, gave him immunity from visitations by the Doanes. Understanding that he had received a large amount of money in gold, these irreverent robbers entered his house at midnight to get it. After much searching one of them gleefully announced that he had found it, for there before him on Clin-gan's desk lay a leathern bag heavy with coins. Snatching this up and taking a violin for jubilation purposes they mounted their horses and rode off with their treasure. But, alas for their hopes! when the bag was opened the gold was found to be "coppers," the result of church collections from Sunday to Sunday.

Next to William Clingan in point of prominence was John Ralston, of Vincent. His father

had fought in the battle of Boyne Water, and the Justice himself had won the rank of colonel

A cursive signature of the name "John Ralston".

in the Revolutionary War. In his march from

Yellow Springs, Washington had used him as a pilot to French Creek, and English scouts had gratified their hatred by burning his dwelling house to the ground. The leading man of Vincent was Justice Ralston, with a military record and a high reputation for intelligence and probity.

A cursive signature of the name "J. Bartholomew".

Justice Bartholomew was a descendant of the noted Bartholemi family of France. To this distinction of ancestry he added that of major of the Chester County regiment of the Flying Camp, and Brigadier-General of militia.

Justice Levis was a man of parts. During the Revolutionary War he had been a captain of militia, and with six other militia officers had collected arms and accoutrements, shoes, stockings, and blankets for the use of the army

from such of the inhabitants of Chester County as had not taken oaths of allegiance and abjuration, or who had aided or assisted the enemy.

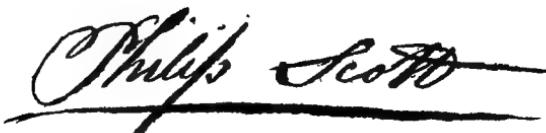
He had also served as a Commissioner of Confiscated Estates and as County Treasurer.

When Colonels Ralston and Taylor and Major Bartholomew, with Captains Luckey

A handwritten signature in cursive script that reads "Joseph Luckey". The signature is fluid and written in black ink on a white background.

and Levis, were all in their places, the bench took on a military aspect.

Justice Heslet lacked a military title, but as he was the son of a soldier who had been an aid-de-camp to Washington in the Revolutionary War, his shortcomings in this respect were overlooked and he was suffered to take his seat.

A handwritten signature in cursive script that reads "Philip Scott". The signature is fluid and written in black ink on a white background, with a horizontal line underneath the name.

In Philip Scott, Nottingham presented a justice who enjoyed a local reputation for

legal knowledge and acumen. From Oxford to the Horseshoe Bend of the Octoraro no one doubted Squire Scott's fitness for a seat on the bench.

Justice Cheyney possessed an unusual share of sound, discriminating common-sense; far and near he was known as an intelligent and progressive farmer and a sturdy patriot.

John Hickman, in his *Sketch of Thomas Cheyney*, says: "In person he was strong and athletic, with black hair, black eyes, and a complexion so dark that it was often jokingly said of him that he had been suckled by a squaw. In character he was an American, prudent, sagacious, resolute, and brave. Through a long life his veracity was never doubted and his honesty was proverbial. In short, he was one of those Revolutionary patriots whose devotion to his country was unwavering, whose example should be handed down to posterity as one worthy of emulation.

"His father was a Friend and his mother a Presbyterian; but his antipathy to the Friends was so very strong that he caused a burial place to be erected on his own farm lest his ashes might commingle with theirs.

"His son Richard served in the American

army, but his brothers and brothers-in-law were all in the British interest, and oft-repeated and earnest were their entreaties to their elder brother to join them against the "rebels"; but their entreaties, backed as they were with foreign gold, were unavailing.

"His active service in the war commenced on the day of the battle of Brandywine . . .

"Henceforth he left all and devoted himself to the service of his country.

"He was ever on the alert, and by keeping the movements of the enemy in his eye materially aided Washington by imparting to him the information thus acquired.

"This course he continued during all the time Washington was encamped in this section of the country.

"He was early suspected for a spy by the British, and as many stratagems were resorted to to entrap him, he was frequently in great jeopardy; they watched his house and often entered and examined it. On one occasion it is believed he made his escape through the chimney. For weeks at a time he could not venture home. On such occasions he would sometimes visit a neighboring house, where his wife, patient sharer of his adversity, would

meet and impart to him such information as she had acquired during his absence and administer to him the magic cordial of deep, heart-felt sympathy. During a part of the winter of '78 he disguised himself as a day laborer and in such disguise was frequently asked if he could tell where Cheyney secreted himself.

"Squire Cheyney served as a Justice of the Peace before, during, and after the war, and portions of his dockets which still exist show that he caused many to be arrested for treason and for carrying stores to the British army while in Philadelphia.

"A man by the name of Pennell hired one Crosby for a bushel of salt, then an item of some value, to decoy Cheyney into the hands of the British, which he failed to accomplish, and after the termination of the war, Pennell sued him for the price of the salt before the Squire himself. It is not certainly known what his judgment was."



A handwritten signature in cursive script, appearing to read "Thos. Cheyney". The signature is centered between two horizontal black lines. Above the signature is a short, curved black mark.

Some months ago, while strolling along a public road leading northward from Cheyney Station, I came across a little graveyard in which I found a modest tombstone that gave the date of his death but presented no eulogy of the gallant squire, told no story of this friend of Washington.

Had he lived and died in Boston, monuments would have been erected to his memory and sign-boards would have pointed the way to the cemetery containing his dust; but here— well! it matters little, for every school-boy who is familiar with the story of the Revolutionary War, or its first great battle, has had his pulse quickened by the sight of the foam-covered horse of Squire Cheyney galloping over the Brandywine hills.

Thornbury has her Cheyney, let Boston have her Revere.



## SIX TAVERNS AT THE SEAT OF JUSTICE

“The days are short, the weather's cold,  
By tavern fire tales are told;  
Some ask for dram when first come in,  
Others with flip and bounce begin.”

*Old Rhyme.*

WITHIN three years after the removal of the county seat, five new taverns were licensed at the town of West Chester, ostensibly for the accommodation of the public and the entertainment of strangers and travellers.

Three of the taverns were located on the lots of Trego, Matlack and Patton, in the two squares north of Market street; the remaining two lay south of Market street.

The names and signs of these taverns were inoffensive and unobjectionable; at least none of them violated the canons of good taste laid down by Addison more than half a century before.

There were no Blue Boars, no Black Swans, no Flying Pigs, no joining of creatures of jarring

and incongruous natures; in short, no objects thrusting themselves out to the eye from which good sense would naturally recoil. Cross Keys has little significance, but it is not absurd; Black is a common color for Bear; a Groom is properly associated with a Horse; a Tree is Green in springtime, and a soldier under Washington may be pardoned for using the name and portrait of that great commander on the forefront of his tavern.

Undoubtedly one of the most appropriate signs of that time was that of *Ship in Distress*, displayed by one of the taverns in Chester, giving, as it did, full and ample notice of what might be expected by its patrons. West Chester's landlords were less truthful; they converted ships into wrecks but gave no warning.

Of the five new taverns at the Cross-roads, Turk's Head, or West Chester as it was variously called, the first to receive license was the Horse and Groom. Emmor Trego was the licensee.

In November, 1786, he addressed a petition to the Court of Quarter Sessions held at Turk's Head, setting forth:

"Whereas the seat of Justice hath been lately moved from the Borough of Chester to the

aforesd place, in consequence of which there is a Real Necessaty for Public Houses of Entertainment," and

  
ending with a prayer that the court would be pleased to recom-

mend him to "his Excellency the President an Supream Executive Council" for a License.

The next applicant to receive favorable consideration was Nathan Schofield, a son-in-law of Isaiah Matlack, who owned the northeastern square in the original plan of the new town.



Schofield had married Matlack's daughter seven years before, and in 1786 had been the landlord of the Turk's Head Hotel.

In February, 1787, he informed the Court that he had rented "the House Lately built by Isaiah Matlack neerly adjoining the Court House," which he conceived was well situated for a public house, and concluded by declaring

that "Convenient Public Houses is much wanted at this Place."

The court agreed with Schofield, and the Green Tree opened its doors to the public.

In May of the same year William Worthington showed the court that he had erected "a Suitable House well selected for an Inn and had supplied himself with a stock of such material as was necessary for the accommo-

A handwritten signature in cursive script, appearing to read "William Worthington".

dation of travellers and such persons as might frequent his house." He too received gracious consideration, and, if tradition may be believed, hung out the sign of Cross Keys.

The year before, he had undertaken to convince the court that "a House and Farm adjoining the new Court House in the Township of Goshen," was very suitable for a public house, and that "a well regulated Tavern was much wanted," but his argument proved ineffective and by a vote of six to three Worthington was compelled to wait another year before serving the public in the capacity of an inn-keeper.

The year 1787 saw the building of the Washington Hotel on the lot which Colonel Hannum had purchased from Benjamin Trego three years before.

Hannum, having received the kindly consideration of the justices, sought to retain it, not so much by mellifluous phrases in his petitions as by the conveniences he offered them.

A narrow alley separated his tavern from the court house. The obliging Colonel projected a passageway from the second story across the alley into the Hall of Justice, so that the judges might experience no difficulty in the roughest weather in enjoying the choicest vintages of his cellar. He actually moved some stones from the court-house wall in his efforts to effect an opening, but the county commissioners presented themselves in the breach and compelled him to abandon this novel method of securing and retaining judicial favor and patronage.

Among the indictments of August Sessions, 1789, I find one against John Hannum, Esquire, and Joseph James, William Henderson and James Henderson, yeoman, charging them with nuisance, in that they "with force and arms, etc., against the public court house there sit-

uate and over & above the public ground adjoining the same court house reserved and set apart for the purpose of securing the admission of light and air into the said Court house & for the use & accommodation of the inhabitants of the said County, unlawfully & injudiciously did erect and build & cause to be erected & built at the distance of twelve feet above the said ground a certain building composed of bricks and timber being twenty-eight feet in length & thirty feet in height and twelve feet broad & then and there with force & arms, etc., the wall of the said Court house injuriously & unlawfully did break & penetrate & divers large holes in same wall did make and cause to be made and then and there the beams and timber of the said building into the said holes so made in the wall aforesaid did introduce put & place & the same building so erected & built then and there unlawfully and injuriously did continue from the said first day of August in the year afsd. untill the taking of this in question . . . by reason whereof the wall of the said Court House was & is greatly injured and the use & benefit of the said public ground diminished & impaired & the free admission of light & air

into the said Court house was & is prevented & obstructed."

But enough of the Washington Hotel. In November, 1789, Samson Babb declared to



the court  
that in  
order to

entertain the public he had built a convenient house at considerable expense on the corner of Market and High streets, whereupon license was granted to the Sign of the Bear.

It was not Babb but another country inn-keeper who engaged a painter to paint a Sign of the Bear and was asked: "Will you have your bear with or without a chain?"

"Is it cheaper without?" inquired the landlord.

"It certainly is," replied the painter.

"Make it without, then," said the landlord. The agreement was made, the painter drew the bear in water colors and departed. In a few days the colors faded and the bear disappeared. When the landlord next saw the painter he taxed him with foul play, but got the reply: "If you had given me more money I would have put a chain on the bear and then—my life for it—he never could have run away."

With the rapid increase of taverns in such a small town as West Chester, it occurred to Peter Mather, of the Turk's Head Hotel, that it might be well for him to indulge in a fitting eulogy of that ancient hostelry. He made the attempt and produced the following:

"That your petitioner hath provided himself with every requisite to entertain judges, jurors, suitors, neighbors and Gentlemen and Ladies of every profession and denomination."

Peter Mather

Some of Peter's friends who read the statement evidently suggested to him the advisability of pruning it a little before submitting it to the eye of the court. Accordingly Peter ran his pen through "Ladies of every profession," and inserted "Lawyers" instead.

This substitution seemingly met with no animadversion on the part of the court.

Six taverns and no church!

It was apparent to the most careless observer that there were too many licensed houses in the town; in fact, it was true of the county as well.

As early as 1789 complaints were made to the judges "of the very great number of un-

necessary taverns in the County" and "the rapid progress of vice and immorality."

"Do not add," writes one warningly to the court, "to the excitements (already too Redundant) of the immoderate Drinker by Licensing a Supernumerary Tavern."

"The consequence of having too many in number," declares another, "gives greater opportunity to poor men of such neighborhoods, who are subject to intemperately drinking Strong liquor to practise it, and spend money and time that is greatly wanted for the support of their families, besides the great evil of debauching both their bodies and minds.

"This is too often the case, it being attended with more difficulty to prevent it than some tavern keepers are willing to undergo."



Sign of the Turk's Head

## THE PASSING OF THE JUSTICES

"Fare thee well, and if forever,  
Still forever, fare thee well.

BYRON.

IN the seventeenth volume of *Original Road Papers*, you will find a petition, numbered 151, addressed to the Justices of the Court of Quarter Sessions, to be held at West Chester on the 29th day of August, 1791.

The petition that follows it is addressed to the Honorable Judges of the Court of Quarter Sessions, to be held at West Chester on the 29th day of November, 1791.

An immaterial fact! Yes, to a careless reader, but to one historically inclined, pregnant with meaning—the court of the justices is ended, the court of the judges has begun.

At the November Sessions of 1791, County Courts were organized under the Constitution of 1790 and the Act of April 13, 1791, carrying the constitution into effect.

The State was divided into five districts

or circuits and the Governor was directed to appoint "*a person of knowledge and integrity skilled in the laws*" to be President and Judge of the Courts of Common Pleas within each of such districts or circuits. He was also required to appoint a number of other proper persons, not fewer than three or more than four, as Judges of the Courts of Common Pleas in and for each of the counties of the commonwealth, and the Presidents and Judges so appointed were, after August 31, 1791, to have all the powers of the Courts of Common Pleas, Oyer and Terminer and General Gaol Delivery, Orphans' Court and Quarter Sessions.

Of the changes made by the Constitution of '90, Judge Addison of the Fifth Circuit thought none was so material as that which related to the courts of law:

"A court of law without the knowledge of law," said he, addressing a grand jury at the September Sessions of 1791, "might, had we never known it to exist, have appeared to us an absurdity too glaring to have place in a free country.

"In framing the present constitution of the county courts in this State, both former usage and a desire of an improved and enlight-

ened administration of justice had an evident influence . . .

“To have composed these courts entirely of men, lawyers by profession, would, unless such judges had been few, have appeared a measure too expensive . . . At all events this arrangement might have been considered too great a deviation from the former system, and therefore to constitute even a professional judge for each county was not attempted.

“To leave the courts unaltered was liable to so many objections that no doubt could exist that some improvement was necessary.

“It was easily agreed that one man, by profession a lawyer, should be allotted to a circuit of several counties as president of the courts in all. And it then became a question whether one man, not a professional lawyer, in each county of the circuit, should be associated with him, and all be judges in every county therein, or whether three or four such men should be associated with him in each county as judges for that county only. The last was conceived to be the most acceptable, and was accordingly adopted.

“These judges, besides integrity of heart and decency of demeanor, are presumed to possess firmness without obstinacy, modesty without

flexibility, discretion without timidity, knowledge without conceit, and judgment without presumption. (One cannot refrain from thinking that he was reading a lecture to his own associates.) These qualities blended with that skill of the law which the president is supposed to have acquired from study and practice in his profession, and which the associate justices are supposed to acquire, by their future attention and experience, may, it is presumed, constitute a tribunal from which the benefits of a court of justice may be expected and in which the powers of a county court may be lodged.

"That these courts are composed of a fixed and small number is a matter of greater consequence than may at first appear. There is a delay attending the deliberations of many and a difficulty in reconciling their various sentiments and bringing them to unite in one point. But delay and difficulty are not the only inconveniences. The business committed to many is often done in a careless and slovenly manner. A trite maxim that 'What is the business of every man becomes the business of no man,' has seldom been better verified than in our county courts.

"The judges being ten, twelve, or twenty in number, any three of whom could constitute a court; being appointed only for seven years; and receiving no compensation for their attendance at court, each thought himself at liberty to pursue his own amusement or avocation, because there was a sufficient number without him to compose a court. If a court was composed, those, who by accident were on duty, thought themselves entitled to a similar relief and laid hold of the first opportunity . . . to enjoy that relief.

"Thus they acquired not that skill which might have resulted from a constant attendance; the business was delayed by each endeavoring to throw it on another, and, *strange as it may seem, it sometimes happened that after several sets of justices at the hearing of a cause it was, at last, decided by those, not one of whom had heard the whole.*

"Uncertainty, too, was the natural result of the former constitution of our county courts. The justices continually changing could not acquire a knowledge of the law, and therefore could not make it the rule of their decisions, the same persons seldom sitting together in the same court, and different courts having no

mutual communications, their decisions could not operate as precedents, to establish any fixed rule to each other or to themselves.

"Thus left like mariners on the ocean, without compass, star, or landmark, they steered at hazard; and there might be a different law on the same subject in every county in the State, and in the same county at different times."

Such were the views of one who was eminently qualified to speak.

## OUR FIRST JUDGE

“Who wants  
A sequel, may read on.”  
ROGERS, *Italy.*

“CLEAR the way for the Honorable Court!” So cried the tipstaff on a bleak day in November, 1791, as he and a companion both armed with long poles—the insignia of office—escorted President Judge Atlee and his associates from their lodgings to the new court-house.

The new court-house, in which Judge Atlee held his sessions, stood with its gable end to High street, with an entrance on the south side. The first floor was used for the court-room. At its north side was a raised platform which when first constructed extended the entire length of the building, but with the reduction in the number of judges a portion of the platform was cut off and a railing added, thus affording more room for the audience and giving more dignity to the court.

At the time of his appointment Judge Atlee was fifty-six years of age.

The appointment of William Augustus Atlee to the Presidency of the Second Judicial District, composed of the counties of Chester, Lancaster, York and Dauphin, was not so much of an honor to him as it was to the Governor who made it and to the people of the district whose issues he was called upon to decide.

Judge Atlee could hardly hope for any greater distinction throughout the State than he already enjoyed as citizen, lawyer, patriot, and judge.

A glance at his career, as set forth in compact form in the *Biographical Annals of Lancaster County*, or a minute examination of some features of his official life in the dust-covered *Colonial Reports* and *Pennsylvania Archives*, will satisfy any candid inquirer that Judge Atlee was no ordinary character.

In the language of the *Annals* referred to, "He came of ancient and honorable lineage." He was one of three (some accounts say five) children born to William Atlee, of Fordbrook House, England, who, contrary to the wishes of his family, married Jane Alcock, a cousin of William Pitt and maid of honor to the



JUDGE WILLIAM A. ATLEE



Queen of England. The match was a clandestine one, and the young couple sailed for America (he in the capacity of Secretary to Lord Howe), landing at Philadelphia in July, 1734.

A year later to the day, William Augustus Atlee was born.

When his father died, in 1744, his mother moved her young family to Lancaster.

In 1758, her son was admitted to the Bar and in a few years achieved the prominence which his talents deserved.

In 1770, the borough of Lancaster made him her Chief Burgess, and four years later, when the Continental Congress assembled and recommended "Committees of Observation," Mr. Atlee was one of the committee elected to represent Lancaster County.

In August, 1777, he received from the Supreme Executive Council of the State the appointment of Second Judge of the Supreme Court of Pennsylvania, his associates being Thomas McKean and John Evans.

In August, 1784, he was reappointed without opposition.

"As a member of the Supreme Court of the State during the formative period of our judi-

cial history, he rendered most efficient service in laying its foundations deep and strong."

Lord Mansfield, in referring to the court decisions as recorded in the official reports of that period, remarked: "They do credit to the Court, the Bar, and the Reporter. They show readiness in practice, liberality in principle, strong reason, and legal learning."

No finer character than Atlee ever sat on the Bench of Chester County.

To discover his nice sense of honor, one has only to turn to his correspondence with President Dickinson in 1785.

When asked by the latter for a copy of his appointment as Deputy Commissary-General of Musters for Lancaster County, Judge Atlee replied that he had kept no copy, and added: "I think in February, 1778, that I resigned the appointment to his Excellency President Wharton & the Honorable Council then at Lancaster from a persuasion that there was *an impropriety in my holding the appointment under the State after taking the oaths as one of the Justices of the Supreme Court.*"

His unremitting attention to his judicial duties is attested to by President Reed in 1779:

"I had promised myself the pleasure of

seeing you before you left town," he writes, "as I wished to have your opinion & advice on some matters of a public nature, but your close attendance upon court deprives your friends of the pleasure of seeing you as often as they wish."

His scrupulous regard for his judicial reputation appears in a letter to President Reed in 1781:

"A fall from my horse, which hurt my leg badly, has detained me from York Court, but I intend (tho contrary to the advice of my physician) to set off for Carlisle *lest I should be charged with neglect of duty.*"

But the quality that most endears this Judge to me is his humanity, a grace that manifests itself in every relation of his life.

As Commissary of Prisoners at Lancaster, he writes, in 1781:

"I cannot think the gentleman who gave the information to Council could have had an idea that there were near two hundred men, women & children among the prisoners of war & convention at this place when he gave his opinion to Council that they might be accommodated in the barracks here. . . . I should think half that number of healthy per-

sons would fill them sufficiently at any time, but in their present sickly state I could wish even that number reduced."

Two years before, as a Judge of the Second District, he had united with McKean in recommending to the Council, for mercy, three "unhappy wretches" who had been sentenced in York and Cumberland Counties, who, he believed, if their lives were spared, "might yet reform and become useful members of society."

To many of the early inhabitants of Chester County, Atlee was best known as the Judge who had tried the case of Elizabeth Wilson.

Prior to 1790, the Court of Oyer and Terminer, for the trial of the higher crimes, was held by the Justices of the Provincial or Supreme Court. It fell to Judge Atlee's lot to preside at the trial of this unfortunate young woman, at Chester, in 1785.

I doubt if a more pathetic case can be found in the annals of our criminal courts.

Elizabeth Wilson was the daughter of a well-to-do farmer who lived in the northern end of West Bradford Township, about six miles from West Chester.

He was supposed to be a Tory sympathizer,

and had a relative who kept the Indian Queen Inn, on Fourth Street, Philadelphia. While visiting this hostelry, about the close of the Revolutionary War, Elizabeth made the acquaintance of a young man with a good reputation but a bad heart.

Under promise of marriage this scurvy villain first betrayed her, and later, seeing that she was about to become a mother, deserted her under the pretext of a distant business engagement. To add to her distress, her relatives, not unreasonably, asked that she withdraw from their dwelling.

Friendless and wretched, she resolved to go home, and begged a farmer who was marketing in Philadelphia to take her back in his wagon. He did so, and in a few hours after she reached her father's house she gave birth to two male children.

For a time her condition was most deplorable; but weeks brought strength, and as soon as she was able, Elizabeth rode to Philadelphia to find her undoer. She found him, talked with him for several hours, remounted her horse, and returned home.

On the Sunday following, while her parents were at worship, she left the house, with her

babies in her arms, saying: "I am going away to be married."

A little later in the morning a farmer saw her seated on a rock by the roadside nursing her infants, after which nothing more was seen of her until about dusk, when she came to the Indian Queen alone, haggard in face and unbalanced in mind.

A week or so passed, and some gunners found the crushed bodies of her two children near a felled tree, in a wood, on the east side of the Edgmont road.

Suspicion naturally turned toward Elizabeth, and at the next Court of Oyer and Terminer for Chester County she was indicted for murder.

When arraigned by the Court she made no answer. Judge Atlee, thereupon, directed the plea of "Not guilty" to be entered and appointed counsel to defend her, who asked that the trial be deferred until the following day. This request was at once complied with.

The next morning her attorney reported to the Court that he had failed to obtain a single word from his client and suggested a continuance to the next term, which Judge Atlee compassionately granted.

In the interval between terms many efforts

were made to induce Elizabeth to speak, but in vain—they ended only in tears.

When the trial came on, and the evidence was in, Attorney-General Bradford generously declined to sum up for the Commonwealth, and Judge Atlee pleaded with Elizabeth to make some declaration. Alas! his pleading ended in failure. She shook her head and repeatedly cried, “I cannot. Jesus, have mercy on me!”

Every one in the court-room was affected with a painful sympathy. It was felt by the Court, it was felt by the jury. The latter stayed out for several hours, and then their foreman, with broken voice, rendered what seemed to them the only possible verdict, “Guilty.”

Elizabeth’s brother William was employed on a farm in a distant part of Lancaster County and knew nothing of her case.

About a week before the time fixed for her execution he had a premonition and notified his employer that he must go at once to Chester. He left, and on arriving at that city was astounded at the news. Hurrying to his sister’s cell, he saw her, and having talked with her, solicited Judge Atlee, Attorney-General

Bradford, and her counsel to come immediately. To these men and the Sheriff Elizabeth told her story.

She had met the father of her children about two miles from Newtown Square. He had led her into a wood and while seated beside her on the trunk of a tree had suggested that she kill her babies and inform inquirers that their father had taken them to Jersey. When she refused to carry out his infamous proposal, he crushed them to death with his feet and made her swear by her soul's everlasting welfare never to tell of the deed or the doer.

When her story—of which I have given but a meager outline—was laid before the Supreme Executive Countil they revoked the warrant for her execution and issued another for the third day of January, 1788.

As soon as he had given notice to the authorities of Chester County, William set out for New Jersey, where his sister's betrayer was said to be living. When found, he declared that he had never known Elizabeth, nor had he been in Philadelphia for two years. William returned to Chester, got further information, and went again into Jersey. This time, he obtained proof that Elizabeth's statements were true.

He sought corroborative evidence, and when about to get it fell sick and decided to start for home and get a further respite.

It was late in the morning when he reached Chester, and to his great surprise he was told that the time granted Elizabeth was out that day—he thought it was not until the next—and that the Sheriff was preparing for her execution.

Sick as he was he galloped to Philadelphia.

"Unfortunately," said a distinguished officer of the Government, "he went to the President, where, notwithstanding all his entreaties, it was some time before he could get to see him, and when he did he stayed, endeavoring to persuade the Doctor (Franklin) to give him a line to the sheriff, which the former, thinking it improper, refused and directed him to me.

"I was just leaving the Council Chamber when he came, all the other members but one having gone. I immediately wrote: 'Do not execute Wilson until you hear further from the Council,' and directed it to the sheriff.

"Wilson set off the moment I gave him the paper, carrying it in his hand. He rode to town in an hour and a quarter, a distance of fifteen miles, and the road at the time exceedingly bad.

"His sister had been turned off about ten minutes.

"Just before the cart drew away she looked attentively toward Philadelphia to see if her brother was in sight."

In the Fall of 1821 a man, prematurely aged, with a long, snowy beard that swept his breast, was found dead in a lonely hovel among the hills twelve miles southeast from Harrisburg. He was known as the "Pennsylvania Hermit," and was the brother of Elizabeth Wilson.

## TO QUEBEC WITH HENRY

"The man that is not mov'd by what he reads,  
That takes not fire at their heroic deeds,  
Unworthy of the blessings of the brave,  
Is base in kind, and born to be a knave."

COWPER, *Table Talk.*

UPON the death of Judge Atlee, Lancaster County generously stood ready to furnish another President Judge for the Second Judicial District.

In looking over the lawyers of that district, Governor Mifflin's eye lighted upon John Joseph Henry, a practitioner of eight years' experience—age, thirty-five.

Henry's appearance pleased the governor and he appointed him.

A man of great stature was Judge Henry, of grave and leonine aspect, of jovial temper and warm sensibilities.

According to those who knew him best—a pronouncedly religious man, cast in the antique mould, neither a doubter nor a friend of doubters—a soldier, too, who had served under Arnold in the expedition against Canada.

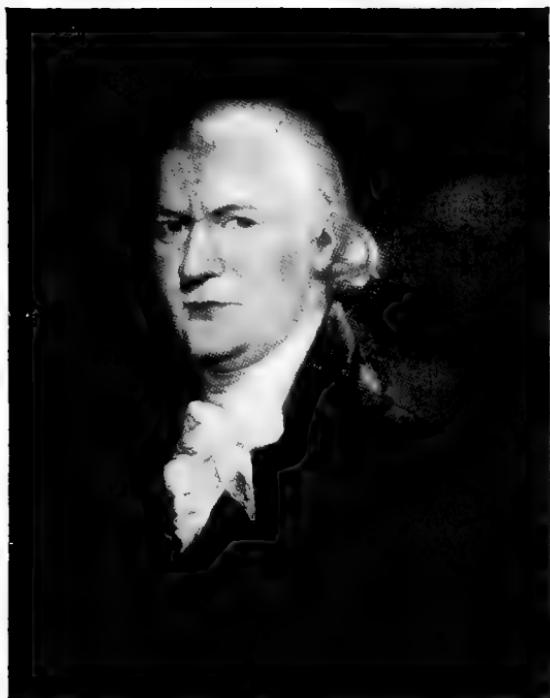
In the spring of 1775 two companies of riflemen were enlisted at the first tap of the gun for the army before Boston; one from Cumberland County and the other from Lancaster County.

With the blessing of his mother, but without the knowledge of his father, young Henry, then a lad of sixteen, joined the company from Lancaster County.

When the day of departure came, and his company was drawn up for inspection, his father passed along the line, but failed to recognize his son in the tall rifleman on its right, wearing a uniform which his mother had made for him with her own hands—a rifleman's uniform of “leggins, moccasins, and a deep ash-colored hunting shirt.”

In the closing years of Judge Henry's life, when illness confined him to his room, he dictated to his daughter, *An Accurate and Interesting Account of the Hardships of that Band of Heroes who Traversed the Wilderness in the Campaign against Quebec in 1775.*

Justice H. Smith, of Dartmouth, calls this little book of Henry's “an interesting though very faulty narrative,” but he frankly admits that it has enjoyed more fame than any of



JUDGE JOHN JOSEPH HENRY



the thirteen other accounts that have come down to us from officers and privates.

Henry begins his story by sketching some of the officers: "Our commander, Arnold, was of a remarkable character. He was brave even to temerity. He possessed great powers of persuasion, was complaisant, but withal sordidly avaricious . . . A short, handsome man, of a florid complexion, stoutly made, and forty years old at least."

An error this, in the age of Arnold—he was but thirty-two.

Later on in the expedition he meets Aaron Burr, then a cadet, and according to Henry "a most amiable youth of twenty."

"It will require," says he in his stern judicial way, "a most cogent evidence to convince my mind that he ever intended any ill to his country of late years by his various speculations. Though differing in political opinion from him no reason has as yet been laid before me to induce a belief that he was traitorous to his country."

Of Smith, the captain of his company, he says: "A good-looking man; had the air of a soldier; was illiterate and outrageously talkative."

Each man in the company bore "a rifle-

barrelled gun, a tomahawk or small axe, and a long knife, usually called a scalping knife."

The Canadians who first saw these men emerge from the wood, said they were *vetu en toile*, "clothed in linen." The word *toile* was changed to *tole*—iron plate. By a mistake of a single word, the fears of the people were greatly increased, for the news spread that the mysterious army that descended from the wilderness was clad in sheet-iron.

But I am anticipating and digressing. On September 11, the troops left Prospect Hill, near Cambridge, Massachusetts, for Newburyport, a small commercial town on the Merrimac River three miles from the sea. From Newburyport they were transported to the mouth of the Kennebec, thence to Fort Western. There, "it was concluded to dispatch an officer and seven men in advance for the purpose of ascertaining and marking the paths which were used by the Indians at the numerous carrying places in the wilderness toward the head of the river and also to ascertain the course of the river Chaudière, which ran from the Height of Land toward Quebec.

"Arnold selected an officer of activity and courage—Archibald Steele of Smith's company,

a man of active, courageous, sprightly, and hardy disposition—who was complimented with the privilege of choosing his companions."

Of these companions, Henry was named as one.

"Young, powerful, untamably vital," says Smith. Nor is the picture overdrawn, for Henry himself declares: "In the heyday of youth I would clasp a canoe on my back and run a hundred yards across a carrying place."

Steele's canoe bore five men with their arms and baggage.

Near the union of the Sebasticook and Kennebec rivers, they meet with moose deer, and Henry makes notes on the aspect of these splendid animals. A little later, when venison is scarce, he tries a lunch of beaver tails, and finding it measurably satisfactory, philosophically observes that "taste is arbitrary and often the child of necessity."

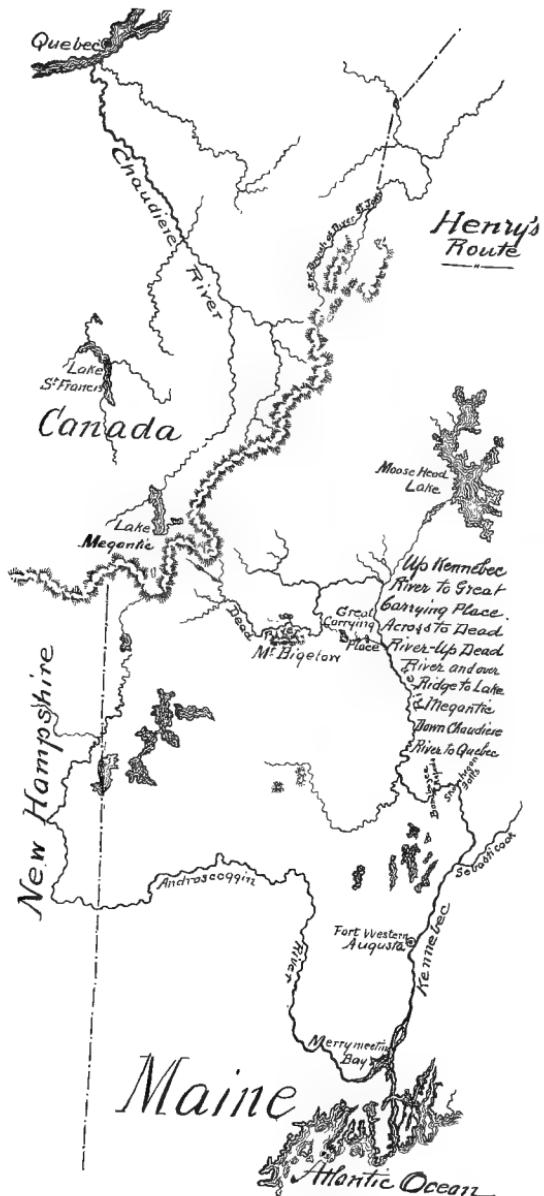
After weeks of toilsome wandering, marking their course "by blazing the trees and snagging the bushes," they come to the mountain known as the Height of Land.

The Kennebec with its cataracts is behind them, so are the black waters of Dead River, so are the three ponds between the two rivers at the Great Carrying Place.

On the map the course looked easy enough. As Smith remarks: "Ever since the earth wrinkled into valleys and mountains the route that Arnold proposed to follow had connected Boston and Quebec. Across a bit of the ocean, up the Kennebec and its western branch, Dead River, over a dividing ridge four or five miles wide, down a river, a lake and a river, and there stood Quebec on its rock."

But the map said nothing about the fierce rapids and falls of the Kennebec or the dangerous floods on Dead River that bury the landmarks and change its sluggish waters into a furious lake; the map gave no hint of treacherous ponds and deceptive plats of ground level as a bowling green covered by elegant green moss, where with every step its victim sank knee deep and lacerated feet and legs with snags of dead pines a foot or more below the surface.

"Johnny," says the guide, "you look like a blue leather wetstone." And well he may, for this lad of sixteen has been dragged out of the swollen waters of Dead River almost dead, has fallen over precipitous rocks, has staggered through oozy swamps under burdens never intended for boyish backs, has suffered from



TO QUEBEC



hunger and cold until as he says: "I could have welcomed death as an auspicious herald."

From the Height of Land, Henry and his companions blunder along the Indian paths to the bank of the Chaudière. Here, one of their number climbs a tall fir tree and "discerns the meandering course of the river as upon a map and even descries the lake Chaudière at the distance of fourteen or fifteen miles.

Afterwards, in writing of this, Henry says:

"It was soon perceived that the French term Chaudière was most aptly applied to the river. Indeed, every part of it which came under our view until we arrived at the first house in Canada might well be termed a caldron or boiler, which is the import of its French name. It is remarkable of this river, and which to me distinguishes it from all others I had seen, that for sixty or seventy miles it is a continued rapid without any apparent gap or passage even for a canoe."

It is hard travelling along the Chaudière at the best of times, but immeasurably harder when moccasins are torn to shreds and shoes are worse, if possible.

One day while stumbling through the forest

Henry comes across some comrades supping broth—broth of a greenish hue, which they call “bear.” He tries it and finds it “dog.”

So run the days, until at last they find themselves—but let him tell it in his own words:

“November 14. Troops easily ascended the hill by a good road cut in it slantingly. This was not the case when the immortal Wolf mounted there; it was then a sharp declivity.”

“November 15. Arrived on the brow of the precipice and found ourselves on the plains of Abraham. . . . The morning was cold and we were thinly clad . . . while an adventurous party despatched by Arnold under the command of one of Morgan’s lieutenants were examining the walls of the city we were pacing the plains to and fro in silence to keep ourselves warm. The winter had set in and a cold northwester blew with uncommon keenness. By the time the reconnoitering party returned daylight was not very distant. The party found everything towards the city in a state of perfect quietness. This report *was delivered in my presence to Morgan*; however, the contrary may have been represented since.

“St. John’s gate, which opens on Abraham’s plain, was unbarred, nay unclosed—nothing but

a single cannon under the care of a drowsy watch was there for defence, we were not a mile distant and might have entered unknown."

Of Arnold's "bravado" in front of Quebec he forms a contemptible opinion, and is not sure that the English appellation of "horse-jockey" may not be deserved.

If you care to follow him in the retreat to Point-aux Tremble, you may meet with General Montgomery, "well limbed, tall and handsome, though his face is much pock-marked."

If you return with them, you will see Montgomery fall at Quebec and find Henry a prisoner in a monastery of the order of St. Francis Recollet.

When he is finally exchanged he returns to his home, broken down in health, still longing to be a soldier.

A handwritten signature in cursive script, underlined, reading "M. J. Henry".

For years Henry's home in Lancaster County had been the resort of the educated men of that community as well as of prominent strangers visiting in that section of the country. During the Revolution the leading men of the

day found quarters there, Franklin, Rittenhouse, and Paine being among his father's guests.

Juliana Library, founded in 1750, and called after Lady Juliana Penn, wife of Thomas Penn and daughter of the Earl of Pomfret, was there. Constant access to books, with abundant leisure for reading, together with the society of the foremost men of his time, made up for a somewhat desultory early training and probably determined his ultimate choice of the law as his profession.

After several years of assiduous study Henry was admitted to practice in 1785.

"But the conditions of success in the law at that time," as one remarks, "were very different from those which command it now. Beyond the statutes of the States there were practically no books on law, written or printed, in America—no text-books—no digests—no reports. The first volume of *Dallas's Reports* was published in 1790, the second in 1798, the third in 1799."

The lawyers of that day were thrown for aid wholly on English resources, and English law books exclusively composed their modest libraries.

Many men of great ability and profound

learning were trained in this early school, and Henry had the honor to number among his associates and friends, Ross, Hall, Watts, Yeates, and Duncan.

Of his work as a judge but little remains. He left no monument of his labors.

Aubrey H. Smith, his grandson, could find but one case tried by Judge Henry which is known to have been fully reported, and that was not tried in Chester County.

Chandler's *Criminal Trials* gives but a feeble abridgment of a remarkable pamphlet, printed at Harrisburg in 1798, which contained a full account of the case of Commonwealth against Hauer and others, in which seven persons were charged with complicity in the murder of Francis Fritz in 1797.

The trial of the persons implicated in that singular crime exhibited the low state of morals in the interior of the State, especially amongst the foreign population, and also involved some legal points of importance in criminal law.

Counsel on both sides were men of great ability, and the many questions of law and fact were argued with much learning and skilfulness.

Throughout the case the rulings of Judge Henry were briefly and clearly made, and his charge to the jury contained a correct and succinct statement of such principles of law as the facts required.

During Judge Henry's term of office, West Chester was erected into a borough. One of the judge's last judicial acts was to sign the following decree:

"Feb. Sessions, 1800. The within petition being read, on consideration it is ordered by the Court, That the interior bounds of the township of Goshen shall hereafter be known and limited by the boundary assigned to the borough of West Chester by the first Section of an Act of Assembly passed the 28th day of March, 1799."

By the Court

JNO. JOS. HENRY,

W. FINNEY,

BENJAMIN JACOBS.

Filed 20, Feb., 1800.



Where Henry left the Kennebec—

## THE JAIL OF '92

"Triste comme les portes d'une prison."

"**S**AD as the gates of prison" is a French proverb with which Hopkins begins his *Dungeons of Old Paris*.

In seeking to find the reason of that "dreary saying," Hopkins undoes the bolts of her historic prisons, slits the curtains of cobwebs which everywhere abound, pushes back on their hinges the triple doors of the cells, peers into the holes that ventilate the conical oubliettes, and even lights up for a moment the *carceres duri* and *vade in pace* into which the hooded victims were lowered by torchlight and out of which their bones were never raked.

There is a sense of suffocation in this prison air, a horror as of death in these moist and sunless caverns.

Standing by the brink of these abysses where sex counted for nothing, no one will dispute Hopkins' conclusion that the most pitiful objects in the annals of France are the victims

of its criminal justice; but many persons will find the reason not so much in the multiplied cruelties of the prisons as in the impossibility of escape therefrom.

How refreshing it is to turn from the mouldy records of these French prisons, whose very dust seems to infect us, to the official records of Chester County's jail in the first years of its establishment. "Sad as the gates of prison" finds little illustration in its early annals, compassion no occasion for copious outpouring.

In the spring of 1792, at the May Term of Quarter Sessions, Charles Dilworth, one time tavern keeper of Birmingham Township and now sheriff, makes the following return:

List of Prisoners Confined in the Gaol of West Chester in the County of Chester May 21, 1792

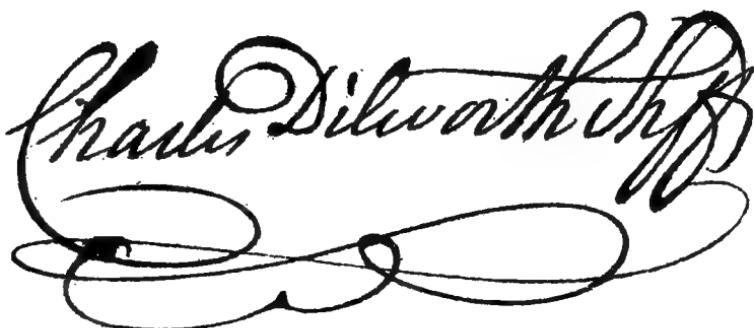
Henry Baughman	Larceny	Committed May 15, 1792
William Lewis	Debt	20, 1792

List of Prisoners who made their escape—

John Johnson	Sentenced to hard labor
Stephen Martin	do
William Webb	Larceny
Jacob Stephens (Negro)	Burglary & Felony

Under Dilworth's administration, apparently each prisoner acted as his own commuter.

When he had suffered the amount of punishment that he felt his offense deserved, or when his imprisonment grew irksome or prison fare happened to be unpalatable, he vacated his cell for a new offender, who in turn remained until he had been sufficiently humbled in his own estimation and then departed.



Such a system has many commendatory features: it dispenses with Commutation Acts, does away with inspectors, relieves jailers of responsibility, gives turnkeys their needed rest and promotes introspection on the part of prisoners.

When I look at this "return" I cannot forbear thinking that Dilworth felt a pardonable pride in the fact that only two of the six prisoners committed to his care had insisted upon remaining and thereby put the county to the expense of their maintenance.

His signature manifests this feeling clearly. How large he makes it and how decorative—not a single possible flourish omitted! "I, Charles Dilworth, have rendered valuable service in my conduct of the jail." So I interpret his signature. Is he wrong? Has he not saved his county the cost of supporting its prisoners? Taxpayers, this is your friend.

During the winter months he could not be expected to accomplish so much, for with the approach of winter the desire to relinquish warm quarters materially lessens. At the November term, Dilworth and Colonel Joseph McClelland (who was elected sheriff in October) were able combinedly to report but one *evasion*:

"Elias Rambo, removed from Phila., committed on September 4, made his escape October 18."

Accustomed as Rambo was to the amusements of the city, he probably found prison entertainments at the Cross-roads dull.

Of course, to vindicate the majesty of the law, indictments now and then were found against prisoners who had escaped, but generally there were some circumstances about their escapes that indicated contempt for their surroundings, and contempt has ever been an unpardonable sin. Romulus killed Remus for

jumping over the walls of Rome, so it ought not to occasion surprise to find Sawney Rhoads indicted at November sessions MDCCXCIII because he "feloniously did break the aforesaid Gaol . . . , by then and there climbing over the wall of the yard."

At February sessions of the following year, George McCorkhill did the same contemptuous act—with the assistance of a rope and hook.

If the case of James Steele, at the previous sessions, is thought to be an exception, let it be remembered that he and Robert McPhorson "did go at large therefrom by opening the doors with false keys and burning the staples." This was a wanton destruction of property, useless and unjustifiable.

One of the convicts in 1792 had the distinction of being in a class by himself.

In Dilworth's and McClelland's "return" we find this item:

"WHEEL BARROW MEN COMMITTED TO LABOR"

Persons Name	Crime	Term of Tryal	Term of Servitude
Henry Baughman	Larceny	May 22 '92	Sentenced to hard labor for nine months

In 1789 the "prisoners at hard labor" complained to the Grand Inquest of Chester County about provision:

"Your Petitioners are convinced by Sad

experience that they do not receive the Quantity of Provision Allowed by the County. Where the fault will rest, your Petitioners would rather not determine; but with great submission we beg leave to say it will appear plainly and doubtless ripe for redress; and to prevent the operation of a just complaint—they are to be kept close at their labour during Court which has heretofore been the Practise.

“Your Petitioners humbly pray that an inquiry may be had by the Grand Inquest into this Complaint, that steps (such as to Your Wisdom may appear just and requisite) might be taken to prevent such prevailing abuses and that Your Petitioners may be present to be heard and they as in duty shall forever pray

“West Chester Gaol Sent by the desire and  
26 Aug. 1789 consent of all the prisoners at hard labor.”

On the back of this petition is a report as follows:

“To the Court now Siting  
“We the Grand Jury for this term having recd. complaints from the Prisoners Praying to be heard on hardships which they conceive they labour under from the present Gaol-

keeper have attended thereto; carefully and impartially heard the cause of sd. complaints together with the present State of the Prison and do not find but that the complaint against Aaron Musgrave the present Gaoler is in a great Measure Groundles

ISAAC TAYLOR."

Who was right, the prisoners or the Grand Jury? I do not know, but I never read this complaint without recalling the prayer of Judge Keyes, of Vermont, when sentencing a poor, ragged prisoner for stealing a pair of boots:

"The Court sentences you to three months' imprisonment in the county jail, and *may God give you something to eat.*"

Fifteen years later Alexander Marshall looked at the jail with boyish curiosity and in his old age sketched the picture for Judge Futhey:

"The bar-room," said he, "was located between the office and the debtor's apartment. In those days it was a crime to be poor, and if a man had no goods for the constable to levy on and sell, he (the constable) was commanded to seize on the body and deliver him to the county jail, there to be kept until set free by due course of law.

"His wife and children were deprived not only of his society, but of his earnings likewise.

"At one end of the bar-room was an iron-grated door that opened into the debtors' apartment, through the lattice work of which many a glass of whisky was handed in and drunk by the inmates, purchased by their more fortunate friends.

"The sheriff was a licensed tavern-keeper, and it was a popular place for jurors to board during court. I remember that when a boy of eight or nine years my father had to attend court as a juror. I went with him some fourteen miles on a separate horse to lead back the horse on which he rode. We fed the horses at the Green Tree Tavern . . . My father boarded with the sheriff as the most honorable hotel in the place, and I was shown around the town to see the sights before court called.

"I remember an instance reported in the newspapers a few years later. Some one who had imbibed a little too freely made some remarks in the sheriff's office that insulted the dignity of that officer.

"The sheriff knocked him down and the matter was brought before the court, the sheriff found guilty and sentenced in addition to a

**fine and costs, to close confinement in his office  
for thirty days.**

**“The law was subsequently altered to prevent sheriffs and justices of the peace from keeping taverns.”**

## ANCIENT PRACTITIONERS

"Nec habeo, nec careo, nec curo."

**A**LMOST a hundred years ago the foregoing motto was fished from a "sea of nugatory matters" by William H. Dillingham, Esq., who said that it belonged to Hon. Henry Hale Graham, a member of the Chester County Bar, whose demise occurred in 1790.

This declaration of Dillingham set me upon two inquiries: First, Who were the active practitioners at our Bar shortly after the removal of the county seat to West Chester? and second, What manner of men were they?

The old appearance dockets in the Prothonotary's office opened their pages to answer the first inquiry, but to the other question they were voiceless.

From 1786 to 1789 no name appears so frequently as "Graham."

Henry Hale Graham was regarded by Dillingham as a very interesting character. Inter-

esting? Yes, but unpatriotic. When the Revolutionary War began he was Prothonotary, register, and recorder, or (to use his official designation) Deputy Register of Pennsylvania for the County of Chester. His sympathy with England resulted in a virtual ouster from office in March, 1777, and four months later the Supreme Executive Council issued a warrant directing his

A handwritten signature in cursive script, appearing to read "Henry Hale Graham". The signature is fluid and somewhat stylized, with long loops and varying line thicknesses.

successor, Caleb Davis, "to enter in the day-time with proper assistants, the Dwelling House and Out Houses of the said Henry Hale Graham, Esq. & search for & secure in some safe place, the Books, Records, Papers, & Seals, belonging to the said office."

On November 7, 1789, he was appointed Judge of the Courts of Delaware County. Three months afterwards he died.

About a year before his death, his son William was admitted to the Chester County Bar. The Justices evidently considered him a man of parts, for the year following his admission saw him appointed an examiner to

pass on the qualifications of John Thomas, a student-at-law.

William Graham undoubtedly possessed some of the higher qualities which his father lacked.

During the Whisky Insurrection of 1794, Captain Graham commanded a troop of cavalry from Delaware County. Exposure incidental to the service brought on a disease of the throat and affected his voice to such a degree that at times he could scarcely speak above a whisper. A few years afterwards, his vocal difficulty became permanent owing to a peculiar experience.

It seems that, in company with several gentlemen, Captain Graham went gunning one day on Chester Island, and by some means became separated from his companions, who, when darkness came on, were unable to find him and returned to Chester. At early dawn they resumed their search and discovered him voiceless and exhausted on the bar where he had remained all night. Short in stature, the rising tide left only his head and shoulders out of the water. After this frightful exposure he never recovered his voice, was rarely able to speak in public and even in conversation was almost inaudible.

"He continued his professional aid, however," said Dillingham, "to his friends, neighbors, and old clients while he lived, and whenever he attempted to speak in court all ears were open.

His uniform  
good sense,  
great knowl-



edge of the law and practice commanded attention from the Bench, the Bar, the Jury, and the Public.

"At the sale of his library Major Barnard and myself were in attendance and purchased a large number of books. Among these ancient volumes were many curiosities, historical and literary as well as legal. I bought a very old bible and presented it to Judge Darlington, whose tastes as a bibliographer were marked."

Robert Frazer, whose name adorns the Appearance Docket of 1794, was admitted to the



Bar in 1792, where his geniality and wit won him speedy recognition. Martin gives us a glimpse of Frazer

in his office that is worth preserving:

"A client," says he, "a well-known, close-fisted old miller, called on him one day for

some advice in reference to a difficulty about his mill-dam and water-power privileges. He found Mr. Frazer in his office, legs in a comfortable position higher than his head, taking his ease, and smoking. The miller proceeded to relate his grievances, and then asked what he should do. Frazer, still leaning back and puffing his cigar, paid no attention to the question. At last the impatient client burst out with: "D—n it, Mr. Frazer! Did you hear what I said?" With a humorous twinkle of his eye, Frazer replied: "Oh, yes! but do you expect a mill to run without water?"

If you grow tired of dockets, look over the narrs and you will find a great number—I had almost said, a majority of them—for many years, endorsed with the name of "Ross."

One of the fathers of the Chester County Bar was this Thomas Ross, a man of strong conceptions and original views. Seen through

A handwritten signature in cursive script, appearing to read "Thomas Ross".

the glasses of one who knew him well and had frequently heard him with

pleasure, he presented "a remarkable instance of the triumph of a powerful mind over the greatest difficulties.



JOSEPH HEMPHILL



"Brought up as a mechanic and for some time a workman at his trade as a millwright, he felt in his breast the inspiration of genius and resolved to leave his occupation and study law.

"Admitted to the Bar, the peculiar structure of his mind, distinguished for strength and originality, combined with an impressive elocution and the most unbending integrity, soon placed him in the forerank as an advocate, and wealth flowed into his coffers to his heart's content."

In 1793, Thomas Ross moved the admission of Joseph Hemphill. It was a frail young man who rose to take the oath of fidelity to court and client, but no lawyer of his time had a clearer conception of what was involved in it or kept it more religiously.

Confident of his ability to achieve success at the bar, Mr. Hemphill generously renounced any share in his father's estate and entered the lists. A few years passed and he wrote his name opposite many important cases. His manners introduced him, his learning supported the introduction.

It would be a pleasure to present some features of Porter and Blair and Moore and Todd and Clymer and Wilcocks and Hudson, could I but find them. Alas! my search reveals few facts of little interest, "mere traces, fitful at best and rendered more faint by the shadows of time."



During the terms of Atlee and Henry the trial of cases appears to have been frequently interfered with by the trespassing of spectators upon the privileges of the Bar. In 1797 it had become so intolerable that Ross and the other distinguished lawyers I have mentioned presented the following petition to the Court:



"The undersigned Gentlemen of the Bar take the Liberty respectfully to represent to the Court, the extreme inconvenience, Interruption, and disgust to which they are exposed by the indiscriminate admission of mere Spectators to seats round the table within the Bar.

"They have always supposed this table to have been exclusively designed for the accom-

modation of the Gentlemen of the Bar, the immediate Officers of the Court, the Students at Law, and such of the parties to a Cause under Trial whose presence may be necessary to their Counsel. It is obvious that if all the persons of these descriptions should be in Court at any One time the Seats round the Table would not be sufficient for their use and that in fact they are not more than sufficient for those who do in general, actually attend. The Intrusion of persons not entitled operates, therefore, as an exclusion of those who are entitled, and if the Gentlemen of the Bar are able to crowd

into a seat they are nevertheless inconvenienced by



the pressure, the Heat of the Conversation, the Impertinence, and other Circumstances still more disgusting and oppressive to such a degree, as to render their situation in Court extremely unpleasant and uncomfortable and frequently to prevent their proper and necessary attention to the business in which they are engaged.

"Should particular times occur, when there are vacant seats within the Bar, still it is not known how soon they may be wanted. Even if it might be deemed not improper to prevent

these seats to be filled by Suitors or Spectators of Consideration or decent deportment *ad interim*,

*Robert Hunter* Yet the Impracticality of making the Discrimination is a Strong reason against the Admission of Strangers at all.

"The undersigned, therefore, respectfully Suggest to the Consideration of the Court the propriety and expediency of making a formal rule of Court on this subject and of making it the peculiar and appropriate Business of Some Officer of the Court to enforce an observance of this rule. It is unpleasant to the Practitioners to make particular applications on this Subject and they hope that some general System may be adopted to prevent the necessity of such applications."

## CREPE AND EULOGY

"Tis not alone my inky cloak, good mother,  
Nor customary suits of solemn black,

But I have that within that passeth show  
These but the trappings and the suits of woe."

SHAKESPEARE, *Hamlet*.

IF Moses Levy, of the Philadelphia Bar, had been asked on the nineteenth of October, 1824, why he was wearing crepe on his left arm, he would have informed his inquirer—if he answered him at all—that the crepe was there as a mark of respect for the memory of the Hon. John D. Coxe, who had recently died.

On the eighteenth of October, "at a *respectable* meeting of the members of the Bar of Philadelphia," of which Moses Levy was appointed chairman, it was resolved:

"That this meeting has heard with deep regret the death of John D. Coxe, Esq., who for many years was an eminent member of the profession and afterwards presided with

distinction over the Court of Common Pleas in this and the adjacent counties.

"Although he had for a long time retired from active life, the Bar have not ceased to remember his extensive learning, his sound, judicious mind, and above all the stern integrity by which his character was particularly marked. They owe him a public testimony of their esteem while he lived and of their regret after his death."

It was also resolved:

"That the members of the Bar will attend in a body the funeral of their former associate,



John D. Coxe, Esq.,  
and in testimony of  
their respect for his

memory will wear crepe on the left arm for the space of one month."

If the first resolution was accurately reported, Judge Coxe had the unique distinction of possessing not merely a judicial but a judicious mind as well.

I should like to know more about this judge —more than these resolutions contain. A description of his personal appearance would be interesting; a statement of his habits; an enumeration of his peculiarities, or a few of the



JUDGE JOHN D. COXE



thousand and one other things that enter into personality.

Alas! he seems to be what Carlyle was accustomed to call "a vanished existence." I can find no anecdotes, no characteristic sayings or doings, nothing but a bare record.

About all that is known of him is his birth, in 1752, and his death, in 1824, with a few intervening facts, such as his entering the College of Philadelphia in 1766; his admission to the Bar a few years later; his appointment as President Judge of the First Judicial District in 1797, which qualified him for the Presidency of the Second Judicial District in 1800.

This record and the additional fact that he was married twice and left several children to survive him, are all the lines that I can offer my readers out of which to construct their sketch. Judicial merit of a high order he must have had, or some personal attractiveness, else crepe would undoubtedly have been omitted from the second resolution.

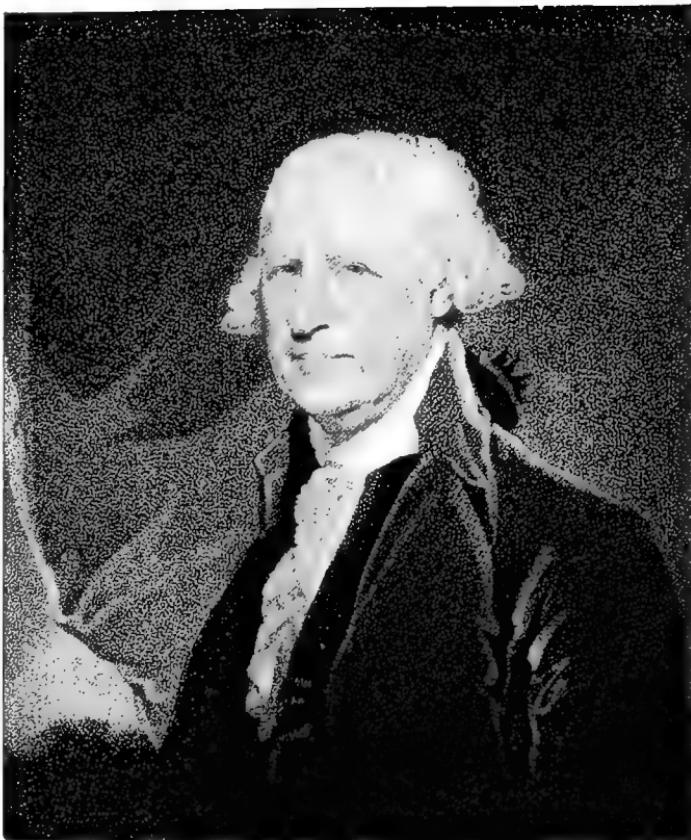
And "now, February 11, 1918," to use the phraseology of the Court, I have made a discovery that confirms my diagnosis:

Horace Binney, in speaking of the Common Pleas of Philadelphia, at this time says:

"It was under the Presidency of John D. Coxe, the only lawyer in it. He was a sound lawyer and a very honest man, a little too much disturbed by his doubts and his talent for making distinctions, but, on the whole, very safe, very patient, and very well tempered. I could tell when a doubt had seized him by the manner in which he pulled one of his eyebrows, as if he could disentangle the web by straightening the hairs."

In the last year of Judge Coxe's term, on May 28, 1805, Hannah Miller, better known as "Black Hannah," was arraigned for the murder of her male bastard child. Her case was tried by Chief Justice Shippen, who had presided at the Court of Oyer and Terminer for 1802 and 1804. Hannah entered a plea of not guilty, and put herself upon the country; but her countrymen found against her, and on June 1 she was sentenced to be hanged. Two months later the sentence was executed publicly at a spot a little east of West Chester where the Philadelphia and State Roads fork. This spot took the name of Gallows Hill, a name that is now changed, to the manifest delight of some of the oldest and most superstitious representatives of her





G. Stuart Pinx.

D. Eaton Augt.

EDWARD SHIPPEN, LLD.  
*Chief Justice of Pennsylvania.*

A. 74.

race, who inform me that on more than one occasion previous thereto, they saw her ghost.

After the execution of Hannah Miller, a quarter of a century passed before an instance of capital punishment was presented in Chester County. Many cases occurred of a heinous and aggravated nature in the interval, cases which aroused public feeling and seemed to demand the sacrifice of life; but humane and intelligent juries tempered their judgment with mercy, and while they rendered justice and upheld the sanction of the laws, they entered with fear and trembling upon the awful responsibility of atoning for blood with blood.

When Judge Coxe resigned, in 1805, Judge Tilghman became his successor, and presided over the August Term of 1805 and the February Term of 1806.

Late in February he was appointed Chief Justice of the Supreme Court of Pennsylvania, to fill the place vacated by Chief Justice Shippen, who had "yielded to the claims of a venerable old age."

The greatness of Judge Tilghman may be seen either by the study of his decisions or the reading of Horace Binney's carefully prepared

eulogium delivered to the gentlemen of the Philadelphia Bar.

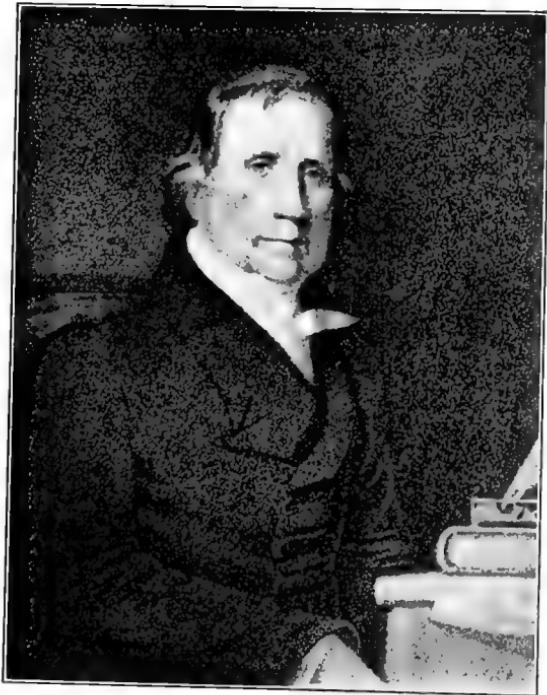
It was a great tribute by a great lawyer to a great jurist.

"His life has been on the Bench; his family has been the Bar; his children are now before me . . .

"The contents of twenty volumes of reports and upwards of two thousand judgments, most of them elaborate, all of them sufficiently reasoned, very few upon matters of practice or on points of fugitive interest, attest the devotion of his judicial life; and although it is not meant to deprive of their share of the merit of these labors the eminent men who survive him on the Bench, and who remain to continue and I hope to exalt the fame of our jurisprudence, I may say and they will cheerfully admit that he was the presiding spirit of their consultations as he was of their court."

Just emphasis was laid upon Judge Tilghman's veneration of the fundamental common law; of his freedom in mind and style from anything like technicality; of the perspicuity, precision, and singleness of his judgments.

"His language is transparent. There is no invo-



JUDGE WILLIAM TILGHMAN



lution, no parenthesis, no complication. Everything is direct, natural, explicit . . . .

"His opinions are moreover remarkable for their common sense and their adaptation to the common understanding.

"But that quality which exalts his judgments the most in the estimation of the public is the ardent love of justice which runs through them all. His appetite for it was keen and constant, and nothing could rouse his kind and courteous temper into resentment more than a deliberate effort to entangle justice in the meshes of chicane. The law was his master; he yielded implicit obedience to its behests. Justice was the object of his affection; he defended her with the devotion of a lover."

From one portion of this eulogy I have always turned with aversion:

"It was his invariable effort," says Mr. Binney, "without regard to his own health, *to finish a capital case at one sitting, if any portion of the night would suffice for the object;* and one of the declared motives was to terminate as soon as possible that harrowing solicitude, worse even than the worse certainty, which a protracted trial brings to the unhappy prisoner."

The reason is as weak as the practice was bad. "Justice abhors hurry," says Bacon. I can find no exhibition of sympathy in the celerity with which an accusation of murder is disposed of before twelve sleepy jurymen.

"He never pronounced the sentence of death," adds Mr. Binney, "without severe pain. In the first instance it was the occasion of anguish. In this as in other points he bore a strong resemblance to Sir Matthew Hale. His awful reverence of the Great Judge of all mankind and the humility with which he habitually

A handwritten signature in black ink, appearing to read "Wm. H. Sylphman". The signature is fluid and cursive, with a large, stylized initial 'W' and 'H'.

walked in that presence, made him uplift the sword of justice as if it scarcely belonged to man, himself a suppliant, to let it fall on the neck of his fellow-man."

## FROM BENCH TO PULPIT

"Thoughts hardly to be packed  
Into a narrow act;  
Fancies that broke through language and escaped:  
All I could never be,  
All, men ignored in me,  
This I was worth to God, whose wheel the pitcher shaped."

BROWNING, *Rabbi Ben Ezra*.

**G**RADUATE of the College of Philadelphia at the age of fifteen! President Judge of the Seventh Judicial District at the age of twenty-nine! Distinguished son of a distinguished father! Such a man is worth looking at for a little while, and such a man was the Honorable Bird Wilson, appointed by Governor McKean to preside over the courts of Chester, Delaware, Montgomery and Bucks.

The father of Bird Wilson was one of the original signers of the Declaration of Independence.

He also sat in the convention called to frame the Constitution of the United States.

Washington declared "that the Convention to frame the Constitution of the United States

was made up of the wisest men in America, and that among the wisest of them was James Wilson."

Bird Wilson inherited his father's talents, and "in due time," as Dr. Turner observed, "made himself equally conspicuous."

There were doubtless some who questioned his qualifications. It was the first known instance in Pennsylvania of the appointment of so young a man. Besides his youth, he lacked experience in the Common Pleas and Sessions. It is questionable if he had ever tried a case before a jury. It is absolutely certain that he had not a single element of the popular orator. But from boyhood he had been studiously inclined, and the fruitage of these studies was early, prolific, and sound. "He was educated and came to the Bar," as Judge Yerkes says, "enveloped in an atmosphere of legal learning."

Philadelphia was then the great center of law and all that pertained to it in America. Besides, all the law courts of the State, and the Supreme and District Courts of the United States were there.

"In the office of his father—first, a leader of the Bar and afterwards a member of the highest

Court in the country—he met and doubtless received the attentions, almost paternal, of such men as John Jay, Oliver Ellsworth, John Rutledge, William Cushing, William Tilghman, Edward Shippen, and Jasper Yeates.

“There, no doubt, the haughty, stern, clear-sighted and self-willed Thomas McKean had come to admire the quiet, unobtrusive, gentle and scholarly young man, so different in disposition from himself.”

Bird Wilson was equally fortunate in his early companions and friends. Many of them were gentlemen who afterwards attained a degree of eminence in their profession which few jurists in this country have ever reached.

Binney, Chauncey and Logan were among them, and Dr. Turner did not use extravagant language when he said—accommodating the words of the Apostles—that Wilson was not a whit behind the very chief of his associates.

The Seventh Judicial District was a hard one, requiring much time and attention to keep up with the business; yet from the time he took his seat the complaints, before so common, ceased.

One who knew him well, remarked of him

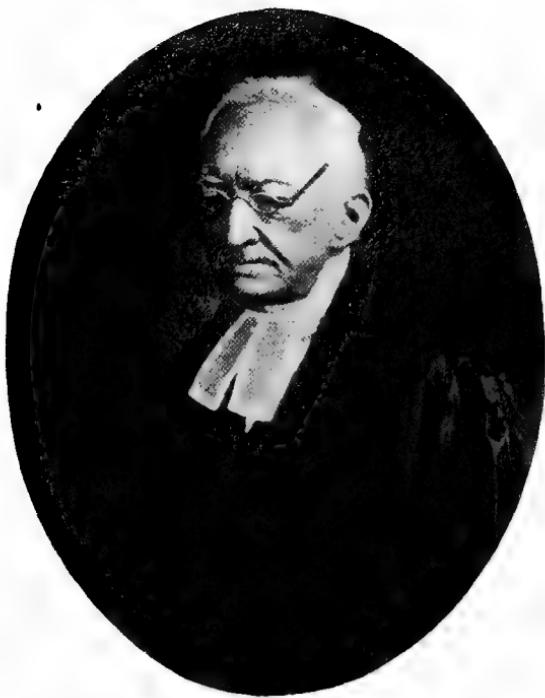
after he became judge, "It was his habit thoroughly to examine all accessible data bearing on any litigated matter in question, keeping in memory all the points of evidence, great and small, on both sides. He weighed these in the balance of equity with the utmost scrupulousness, drew his conclusions with logical accuracy, and formed his judgments with most conscientious carefulness.

"Indeed, Judge Wilson was so distinguished for the soundness of his decisions that only one was ever reversed in a superior court, and that simply because he had not access to a document which contained such information on the case as, if known, would have modified his view."

This is high praise, but unfortunately the facts compel me to abate it a little.

Without looking into the records of the other courts in Judge Wilson's district I find, as the result of a cursory examination, four reversals of the cases appealed from the court of Chester County during a portion of his term. Yet, in passing judgment upon Wilson, Judge Yerkes's observations should not be overlooked:

"The reported cases appealed from him (Judge Wilson) show that many new and



JUDGE BIRD WILSON



intricate questions were decided by him, and his position was argued with such ability and learning; that, in a majority of the cases where he was reversed, one of the three Supreme Judges dissented from his colleagues and agreed with him: a high compliment to his ability and the best evidence of the difficulties of the questions involved."

Seven years after his appointment to the Bench he edited an edition of Bacon's *Abridgment*.

In his introduction to this publication he informs his readers that his object was "to incorporate into" the *Abridgment* the substance of the English decisions which had been decided since its appearance, together with the cases upon the same subject decided in America.

The preparation of this work of seven volumes demanded great labor and research, and was characterized by such exhaustive investigation and extreme accuracy that it won the commendation of Judge Story.

Henry Chapman regarded Wilson as a model judge—learned, polished, affable, pleasant; but, although modest, possessed of sufficient fire and vigor to maintain order in the court room.

John McKissick discovered this aspect of his character at the August Sessions of 1808, where, after sentencing him to imprisonment for six calendar months for assault and battery, Judge Wilson added:

"And the said John McKissick, having during the trial been repeatedly of a contempt of the Court by interrupting the witnesses and telling them what they said was a lie and refusing to desist and be silent after repeated orders of the Court, it is ordered and directed that for the said contempts he suffer imprisonment for six calendar months, to commence from the expiration of the six months to which he is sentenced for the assault and battery on Ann McKissick."

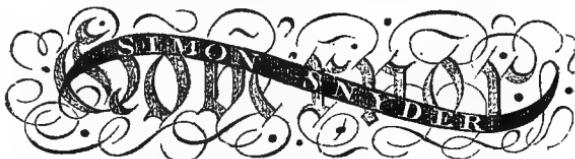
Upon the recommendation of a number of respectable citizens the defendant was granted a pardon by Governor Snyder on July 3, 1809.

As this is the only pardon among the papers of Judge Wilson's court I present it in full.

Had defendants in the Oyer and Terminer Court of Bucks County been asked their opinion of Judge Wilson they would probably have described him as somewhat vindictive. Even Judge Yerkes declares that, notwithstanding his mild and gentle disposition, he was a vigorous

Pennsylvania, ss.

In the Name, and by the Authority, of the Commonwealth of  
**PENNSYLVANIA,**



OF THE SAID COMMONWEALTH,

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
GREETING:

Whereas, at a court of General Quarter  
Sesbury of the peace, held at West Chester in and for  
the county of Chester, on the first day of August, 1816: certain  
John McElroy was convicted of an assault and battery upon the person of his  
wife, and of a contempt of court, and was therefore sentenced by said court to  
undergo an imprisonment for the term of one year: Whereas the said  
John McElroy hath by petition, praying a pardon for his offences, and  
hath moreover been well recommended by a number of reputable citizens  
of the county of Chester aforesaid.

Wherefore know ye, That upon due consideration of the case, I have  
this day pardoned the said John McElroy, convicted  
as before said, and he is hereby pardoned.

Given under my Hand and the Seal of the State, at Lancaster,  
the third day of May in the Year of our Lord, one  
thousand eight hundred and nineteenth and of the Commonwealth the  
thirty-third.

By the Governor.

A handwritten signature in cursive script, which appears to read "A. B. Dickey, Esq."



administrator of the criminal law. The first horse-thief convicted in his court at Doylestown received a sentence of nine years, and in addition was required to furnish a surety for five years more.

In Chester County, where Judge Wilson probably thought the deterrent influences were not so necessary, his sentences were less severe:

Thomas Vanderslice was given but five years for manslaughter, with surety for two years thereafter; Solomon Lane was allotted five years for arson; William Clark, three years for burglary; while Maurice Crosier, for a like offence, received a year and a half less.

These were all Oyer and Terminer cases.

In the Court of Quarter Sessions of Chester County, few defendants had reason to complain of exemplary punishments administered by Judge Wilson:

At the August Term of 1806, where William Cox, charged with assault and battery, submitted but protested his innocence, I find the following entry on the indictment: "Fined one cent."

Reviewers of Judge Wilson's life have expressed surprise that he was able to accomplish so much in both law and theology. The

answer is found in what Addison was accustomed to call, "methodical regularity."

It showed itself even in his walking five miles a day, regardless of the weather, and almost always over the same course.

Why did Judge Wilson resign? William J. Buck undertakes to explain it by saying: "A murder was committed near the present town of Media, in which a young man of very respectable family connections was implicated and was arraigned before him October 20, 1817, which resulted in his conviction in the first degree. But the judge was unwilling to sentence him. After several postponements he finally concluded to resign the position, Judge Ross taking his place April 13, 1818, and the condemned received his sentence from the latter."

The murder referred to by Buck was that of Edward Hunter. The murderer was John Craig, of Charlestown Township, Chester County, who, according to the advertisements, was "a blacksmith by trade, about five feet ten inches high, stoop-shouldered, stout-build, a little knock-kneed, very much sunburnt, freckled, thick lips, sandy complexion, large whiskers."

The murder occurred on July 19, 1817. Craig

was arrested in September, indicted on October 20, 1817, arraigned before Judge Ross the following day, but was not tried until April 14, 1818, and then by Judge Ross.

Judge Wilson's biographer falls into the same error when he says: "The case came on for trial before Judge Wilson, and in the course of its prosecution some painful and harrowing family scenes were witnessed, almost convulsing the agonized spectators, and, as a matter of course, making a deep impression upon the judge, whose native refinement and delicate kindness of heart no one who had ever known him could possibly mistake."

The same biographer alludes to a scene in the last illness of Judge Wilson, where, "clasping his forehead violently with both hands, he exclaimed in tones of deep bitterness, 'He was launched into eternity, unprepared; but, God! impute it not to me.'"

This "agony" of Judge Wilson could not have arisen from the trial and sentence of Craig, because Craig was neither sentenced nor tried by him.

Some writers have thought so, but they have overlooked the fact that he had already tried several murder cases; in fact, he had

hardly taken his seat until he was compelled to pronounce sentence of death upon Elizabeth Rimby for murdering her child.

Did he resign because of his unwillingness to preside at the Craig trial?

Ashmead answers this question negatively, "inasmuch as on March 14, 1817, four months before the murder of Hunter, Bishop White had admitted Bird Wilson to holy orders."

A handwritten signature in cursive script, reading "C. Bird Wilson". The signature is enclosed within a decorative oval border.

There was nothing in Craig's brutal crime to enlist Judge Wilson's sympathy, and yet having formed the resolution to resign and devote himself to the Christian ministry, I can readily conceive how the prospective trial of Craig for the murder of Hunter might have quickened his action, which would otherwise have been delayed for some time.

As a clergyman of the Episcopal Church Judge Wilson's attainments won him speedy promotion to a professorship in the theological seminary of that denomination in New York, where he remained actively engaged until June

25, 1850, when he was appointed emeritus professor.

He died at the age of eighty-two, and was known by his fellow-clergyman as one of the sweetest characters and choicest scholars of the American Church.

## ISAAC BARNARD

"Tell the story to your sons  
Of the gallant days of yore,  
When the brig of seven guns  
Fought the fleet of seven score."

ROCHE, *The Fight of the Armstrong Privateer.*

AFTER the War of 1812 was over, the Marquis of Tweedale, who had commanded the One Hundredth British regiment, made a visit to Philadelphia and expressed a desire "to make the acquaintance of the young gentleman, Barnard, who had so gallantly driven him from his position at Lyon's Creek."

Whether or not the Marquis realized his desire I do not know, but history will support me in the statement that "the young gentleman, Barnard," was worthy of his acquaintance.

Our hero was born in Delaware County on March 22, 1791.

His father, James Barnard, was elected Sheriff of Delaware County in 1792, and in 1800, by appointment of Governor McKean, became its Prothonotary and Clerk of Courts.

Napoleon Bonaparte played with cannon; Isaac Barnard played with writs.

When Prothonotary Barnard moved into Chester, his son prosecuted his studies "in such seminaries as the ancient Upland then afforded until 1806."

In that year, at the early age of fourteen, Isaac bade farewell to schools and seminaries, and entered the office of the Prothonotary as clerk.

He soon became so expert, and was so obliging and attentive, that he attracted the special notice of all who had business there. "I recollect often to have heard expressions of admiration by elderly men," said Dr. Darlington, "that a youth of such tender years should officiate so gracefully and so well."

In 1809 Isaac left Chester and became a clerk in the office of Frederick Wolbert, Prothonotary of Philadelphia County. Two years later he returned to Chester and began the study of law with William Graham.

"This practical education," as Dr. Darlington well observed, "was precisely that kind which made him an accomplished clerk, acquainted with men, and prepared for the active duties of life."

A few days before he completed his twenty-first year, his law studies were suspended by the receipt of a captain's commission in the Fourteenth United States Infantry.

In April, 1812, Captain Barnard came to West Chester, opened a recruiting office, or "rendezvous," as Dr. Darlington called it, and enlisted a large number of men.

In the autumn of 1812 the military authorities transferred him to Baltimore. He remained there until the spring of 1813, when he went with his regiment, under Colonel Winder, by way of Philadelphia and New York, to Sackett's Harbor, to serve in the approaching campaign on the Canadian frontier.

At the taking of Fort George, Captain Barnard behaved most gallantly, and shortly afterwards was advanced to the rank of major.

In the fight at La Cole's Mill, Major Barnard's command covered the artillery and brought off the most advanced piece after every man belonging to it had been shot down. He descended the St. Lawrence with General Wilkinson, fell sick, and stretched upon his back in a boat, had just life enough to hear the roar of artillery during the battle of Chrystler's Farm. He was with General Izard's army at

Plattsburg, where, in consequence of the death and captivity of his superior officers, the command of the corps devolved upon him. For his conduct at Plattsburg he received the compliments of his commander-in-chief.

At Lyon's Creek he again distinguished himself by his good conduct before the enemy.

It is said that while Major Barnard was conducting the charge upon the enemy's artillery, the center of his battalion—perhaps by taking shorter and firmer steps than the flank—formed a slight curve to the rear. The major, approaching the men thus out of line, called out: "Dress up, my brave fellows! You're not afraid!"

The appeal was keenly felt, and with a bound the center so sprang forward that the curve was instantly reversed.

"The gallant charge of the Fourteenth soon compelled the enemy to give ground," wrote General Bissell in his report, and he added: "The handsome manner in which Major Barnard brought his regiment into action deserves particular notice."

After peace had been secured the War Department offered to continue him in the regular service, with the rank of captain. He

had shown himself to be a thorough soldier, brave, intelligent, skilful, equal to every emergency in which he had been placed; the department needed him, and his brother officers manifested the liveliest interest in his success.

But he had other ambitions, so he declined the offer and resumed his reading of law.

Fortune smiled upon him and opened up the avenues that lead to success.

In the spring of 1816 he was admitted to the Bar, and at once established himself in the confidence and affections of the people.

Within a year after his admission his companion-in-arms, Colonel Cromwell Pierce, who was elected Sheriff, retained him as official counsel, and in the same year he received the appointment of Deputy Attorney-General for the county. Soon after he obtained the latter appointment, two of the oldest and ablest members of the Bar (so runs the story) appeared in a criminal prosecution as counsel for a defendant of high social standing, and demanded of young Barnard that he endorse on the bill of indictment the name of the prosecutor, remarking that the prosecution was malicious and that they proposed to urge the jury to impose the costs upon its institutor.

Barnard at first refused to comply, but upon the judge's reminder that the jury had power over the costs in such a case, promptly took up the bill of indictment and endorsed it with his own name.

Is this story true? Reader, I can only say that I have examined every indictment on file for the years of Barnard's term, and have found none bearing his endorsement as prosecutor. Of this, however, I am confident, that in a proper case, Barnard would not have hesitated to take such

action, nor  
would it  
have been

*I P Barnard*

attended with any risk, for no jury could have been found in the county who would have imposed the costs, or any portion of them, on the hero of Lyon's Creek.

In fact, the courage and ability of Deputy Attorney-General Barnard so pleased the people of his senatorial district, that in October, 1820, they elected him a senator.

One month later he formed closer relations with the "Bench" by marrying Judge Darlington's eldest daughter, Harriet.

In April, 1824, Governor Schultze tendered

Major Barnard the office of President Judge of the District Court of the counties of Lancaster and Dauphin, "which flattering distinction," said Dr. Darlington, "partly by unfeigned diffidence (for he was ever diffident and bashful except in the presence of an enemy) and partly by an unwillingness to relinquish his rapidly increasing practice, he was induced to decline."

In January, 1826, his friend the Governor appointed him Secretary of State, and about a year later the Legislature of Pennsylvania elected him to the Senate of the United States.

Unfortunately for him, unfortunately for the State, his health would not endure the strain of that high office. In the autumn of 1831 he resigned his seat and returned to his home in West Chester.

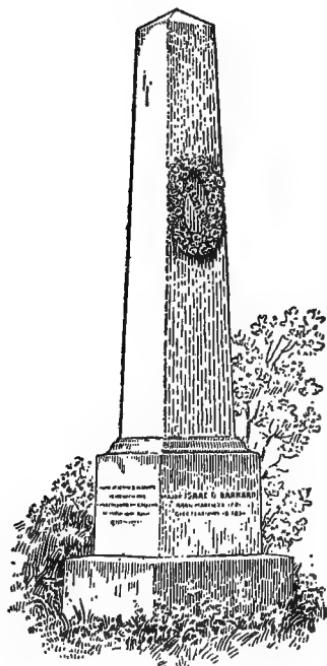
Meanwhile his friends, who had been ambitious to have him nominated for Governor, had suffered defeat by what Dr. Darlington styled "a sinister combination of envious cliques."

Barnard's work was almost ended; three years more, and then—death and burial in the Friends' Graveyard on High street.

On October 19, 1854, the anniversary of the battle of Lyon's Creek, his body was re-interred

in Oakland Cemetery, in a lot set apart for that purpose, and a marble monument was raised to his memory by the citizens of Chester and Delaware Counties.

Here, before a great concourse of people, Major Barnard's venerable friend, Dr. Darlington, delivered a most impressive address.



Monument in Oakland Cemetery.

## ASSOCIATE JUDGES

"Few die, none resign."

JEFFERSON.

"**T**HE President was opposed to the testimony, but the Associate Judges admitted it and sealed a second bill of exceptions."

I quote from the report of the case of *Sterrett vs. Bull*, 1 Binney 234, and in doing so think of the beautiful picture drawn by Judge Addison:

"These judges, besides integrity of heart and decency of demeanor, are presumed to possess firmness without obstinacy . . . knowledge without conceit and judgment without presumption."

It does seem almost sinful to mar it, but the records do declare that at the trial of the case of *Bull vs. Sterrett*, in August, 1806, when a certain receipt was offered in evidence, the President was opposed to its reception, but the Associate Judges admitted it.

It occurred only a few months after Judge

Wilson's appointment to the Bench. Doubtless his associates thought that in view of his extreme youth and inexperience a tenacious adherence to their view as to the admissibility of this evidence could not be regarded as a manifestation of obstinacy, conceit, or presumption, but, on the contrary, was a proper exhibition of firmness, knowledge and judgment.

Evidently they did not take the same view of their duties as Judge Lloyd did, who occupied the Bench as Associate Judge in the adjoining county of Delaware.

Tradition says that when he was asked if the duties devolving on an Associate Judge were not onerous, he replied: "Yes, very. I sat five years on the same Bench in the old Court-house at Chester without opening my mouth. One day, however, towards night, after listening to the details of a long and tedious trial, the President, leaning over towards me and putting his arms across my shoulders, asked me a question:

"'Judge,' said he, 'don't you think this bench is infernally hard?' To this important question I replied: 'I thought it were,' and that's the only opinion I ever gave during my long judicial career."

On August 17, 1791, Governor Mifflin appointed as Associate Judges of the Second Judicial District, Joseph Shippen, of Westtown, Walter Finney, of New London, and James Moore, of West Nantmeal.

On July 3, 1792, he added to these Judges, Benjamin Jacobs, of West Whiteland, thereby filling up the number allowed by law.

Judge Shippen resigned December 28, 1792, and on January 5, 1793, Samuel Evans was appointed in his stead.

After holding the office about a year, he, too, resigned, and on November 1, 1793, James Boyd, of Londonderry, was named as his successor.

Finny, Moore, Jacobs and Boyd were associates together until 1802, when Moore died. Shortly afterwards, on April 7, John Ralston, of Vincent, took his place.

On March 31, 1803, Judge Jacobs' commission was vacated, and on the same day John Davis, of Tredyffrin, was commissioned.

Finney, Boyd, Ralston and Davis were associates together until the death of Finney in September, 1820.

In 1803 the Legislature passed an act providing that when a vacancy should thereafter

happen in any county by the death, resignation, or removal from office of any Associate Judge, that the Governor should not supply the same until the number of Associates should be thereby reduced to less than three, and that he should commission so many as would complete that number in each county and no more.

In 1806 an act was passed reducing the number in a similar manner to two.

When Judge Finney died, in 1820, no appointment was made. When Judge Boyd died, in 1821, the reduction was complete.

Of the various Associate Judges who occupied the Bench from 1791 to 1821, perhaps the most prominent, certainly the best equipped, was Benjamin Jacobs, of West Whiteland.

Judge Jacobs was a well-educated man, had studied law, and in addition was a practical surveyor and conveyancer. His father, John Jacobs, was elected some fifteen years in succession a member of Assembly, and during one session was Speaker of that body.

Did these Associate Judges answer the end of their creation?

If that end was the acquiring, by attention and experience, of that skill in the law which

the President Judge was supposed to have gained from study and practice in his profession, the answer must be in the negative.

But, on the other hand, it would be unfair to regard them as mere excrescences upon the judicial system. In passing upon questions of fact, they were at least as competent as the President Judge, whose whole life had been spent in conducting lawsuits. Most of them possessed that commodity so useful to the highest judicial learning—common sense.

In considering this question one does well to remember the observations of Governor Curtin: “Judges learned in the law are just like other men. They are subject to the same prejudices, passions, sympathies, friendships, and dislikes. A judge learned in the law may visit upon his enemy the highest pains and penalties, and he may sometimes require, for the protection of the liberty or the rights of the citizen, either in his person or his property, the common sense of an Associate Judge not learned in the law, because, after all, ‘learned in the law’ does not make the highest judicial character. It requires integrity, it requires common sense, it requires the absence of all prejudice and passion.”

Few well-informed persons will dispute Curtin's conclusions that in appointing road or bridge viewers, in granting licenses, in sentencing the convicted, in hearing motions for new trials, in all the various and complicated duties and powers given to the Courts, the Associate Judges were of great service.

In our own Quarter Sessions I do not doubt that they probably moderated some of the sentences which a President Judge, who by virtue of his office held himself more separate and apart from the common people, might have been inclined to impose.

Then, again, five nods by five grave-looking gentlemen, on any ordinary question of law, would seem to an unsophisticated countryman to be quite conclusive of the matter.

Of course, every President Judge did not appreciate to the full the merits of his associates, or feel the need of their intuitive sense of justice as a mirror to reflect the image of his purely mental or speculative judgment.

Let "the oldest inhabitant" speak:

It was in the days of which Everhart wrote, when the wassail bowl was the symbol of hospitality and the number of lay judges had been reduced to two.

"One morning," says he, "the President Judge entered on the stroke of the hour for the 'Sessions' to begin; but alas! as he attempted to walk up the steps it was apparent to both his Associates that he had obeyed too literally the injunction on his tankard the night before:

'Drink till you cannot stir a foot.'

"With rare presence of mind the lay judges hastily rose and assisted their President to his chair. Upon reaching it he halted and, turning towards them, said most deferentially: 'Gentlemen, I thank you for your kindness. I never knew until now what you were here for.

" 'Crier, open the Court.' "

But the harshest critic of these Associate Judges must admit that they loved their office.

In a letter to the *American Republican*, under date of December 22, 1818, the writer observes:

"There have been no less than six different Presidents on the Bench in this county in a period of about twenty-five years, which is a pretty brisk rotation, considering that the tenure of their office is *quam diu bene se gesserint*—or during good behavior.

"The mutations here noticed have not, however, extended themselves in a similar degree to the Associated brethren. They appear generally not only to have behaved themselves well, as the law directs, but also to have felt a degree of attachment to the office. The language of Mr. Jefferson, on another memorable occasion, is strictly applicable here: 'Few die, none resign.' "

The writer overlooked Shippen and Evans.

## JUDGE ROSS MAKES SOME CHANGES

"You have done well, and like a gentleman."

TENNYSON, *The Princess.*

**I**N February, 1818, when Judge Ross assumed the duties of President Judge of the Seventh Judicial District, the *American Republican* introduced him to the citizens of Chester County in manner and form as follows:

"A change in so important a branch of government as President Judge of the Courts of Common Pleas is naturally expected to occasion considerable solicitude in the public mind.

"Where the office has been for a number of years filled with so unexceptionable a character as Judge Wilson, it will be readily acknowledged that something more than an ordinary mind is required to fill the place with credit to himself and satisfaction to the people.

"That Judge Ross was fully adequate to answer not only the *expectations* but the *desires*



JUDGE JOHN ROSS



of his friends, we never had a doubt; and the initiatory lesson, which he has taken in this county under many disadvantages, has convinced us that however highly the citizens of this district may have prized the legal and moral excellences of the late judge, they will have nothing to regret in the exchange, since it is known that Judge Wilson's retirement was a matter of choice.

"A long series of laborious, extensive, and successful practice at the Bar has confirmed him in the reputation of a sound lawyer and an able advocate; and the manner in which he has commenced business on the bench gives a flattering earnest of a dignified and impartial judge.

"His manner of delivery is clear and intelligible, dignified without austerity, decisive but not arbitrary. And, though he seems disposed to guard the rights of the individual, when arraigned before the Bar, yet the prudent part of the community will be happy to learn from his own language that he will in all cases 'frown indignantly on every attempt to trample on the peace and good order of society.'

"If any desire to know his politics, we can with the utmost confidence assure them that

he is a genuine Democratic Republican. Not a noisy, frothy politician, but one of decided principles, whose *practice* corresponds with his *professions*. In Congress he opposed, by his arguments and votes, the 1500 dollar law in every stage of its progress, and in the present session used his endeavors to reinstate the old pay of 6 dollars a day."

The *Village Record*, in commenting on his appointment, expressed its confidence that Judge Ross would be known "neither as a Federalist nor a Democrat, but as an independent judge, doing his duty without fear, favor, or affection."

He answered these expectations and showed himself to be "a man of active mind and decided character, who exhibited now and then some of the characteristics of the schoolmaster.

This surprised no one, for the Judge had begun his career as a teacher. It was at Dunham school-house that Richard Backhouse found him and persuaded him to enter upon the study of law. In fact, so deeply interested was this furnace proprietor in the youthful teacher, that he agreed to support him until he could maintain himself by his profession. Ross accepted Backhouse's gen-

erous terms and in a few years became a proficient lawyer.

Those who knew him personally, describe him as a tall, athletic man, aristocratic in bearing and feeling, of a stern, unyielding nature and withal somewhat eccentric.

It is said that his legal studies had given him a peculiar relish for the institutions of England and that with the addition of a wig and gown he would have served as an excellent model of an English judge.

Hardly had he been seated on the Bench of Chester County until he requested a change in the meeting place of the Grand Jury—manifestly for the public good, as the following letter will show:

"When the public buildings of this county were erected, room sufficient was provided in them for the Grand and Traverse Jurors, County Commissioners, County Treasurer, etc. It is now about twenty-five years since a motion was made by the Grand Jury and a number of respectable citizens of the County that a room should be furnished for the use of the Grand Jury in which they should always hold their sittings during court.

"It was strenuously urged by several and

opposed by a few; the subject was new, originated by a small number of persons, compared with the whole population, and it was said that if a Grand Jury Session should recommend it another might think it useless, and so the matter rested from time to time. Sometimes a Grand Jury would introduce the subject and recommend it to the attention of a subsequent jury, sometimes the citizens would talk of it in small circles of their acquaintance and warmly reprobate the idea of the *Grand Inquest of Chester County* holding their sittings at a public house. Notwithstanding all which the subject has always ended in talk, until, at the last Court, *Judge Ross publicly requested that a room in the Court-house should be fitted up for the accommodation of the Grand Jury*, which I am told has been complied with.

"No sooner was the subject broached in public by the Court, but every man's enquiry was, Why was it not done sooner? Why did not former Grand Juries request it, that they might not be under the disagreeable necessity of sitting at a tavern? I think the answer is plain: The subject was never properly brought before the public to pass their unalterable sentence upon, as it so justly deserved.

"Objections more weighty, I think, might be given why the County Commissioners should not hold their office at a public tavern than in the case of the Grand Jury. It is certainly a disgrace to the county of Chester, and more especially to the Commissioners themselves, that they should be content with peddling their office about from tavern to tavern as suited the convenience of the tavern-keepers and suffer themselves to be penned up in a small room, too confined even for a barber's shop, and perhaps with a smoky chimney.

"But I will no longer dwell upon the subject, as I have been given to understand that a room is to be provided in one of the public offices in which to transact their business."

Besides removing the Grand Jury from a tavern to the court-house, Judge Ross also approved *Certain Rules to Regulate Spectators*:

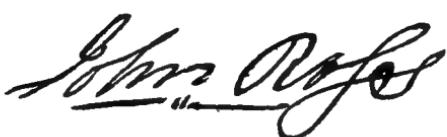
"1. No person except the Officers of the Court and Students at Law shall on any account seat themselves at the Counsel table except parties having business, who may be invited by Their Counsel and who shall stay as long as their business lasts only.

"2. No one shall sit or stand in the windows or sit on the Bannisters or stand on the Benches."

The petition filed in August, 1818, asked for the approval and enforcement of these rules "at least during the present hot weather."

Twenty-one years had passed since a similar petition had been presented to Judge Henry.

Thomas Ross headed the old list of signers; he heads this one also, and Townsend Haines, who passed his examination the preceding February, concludes it. Between these signatures are eight others, representing members of the Bar admitted since the turning of the century: Duer, Pyle, Barnard, the Edwardses, Darlington, Dillingham, Porter and Haines, are men whom we shall meet hereafter.

A handwritten signature in cursive script, appearing to read "John Ross".

Of Ross I take my leave. "He is practising now," says a

friend, "from an attachment to a favorite pursuit, rather than from lucrative considerations.

"But in his elevation he has not forgotten his early avocation. In the drawer beneath his extensive library he still preserves the implements of his trade, still takes as much pride in his fore-plane and hand-saw as in his best edition of Burrows or of Bacon."

## FOUR SKETCHES

"Why is the forum crowded;  
What means this stir in Rome?"

MACAULAY, *Virginius.*

AT an early hour on Thursday morning, August 20, 1820, the village of West Chester was thronged with people eager to obtain seats in the court-house, for it had been announced that the case of Jacobs against Pauls was about to go to the jury.

A murder trial? No! an ejectment suit; "one of the dryest and most unpromising for the purpose of display that could be conceived." At least that was the way it looked to a member of the Bar who had heard all the testimony. "The parties were both rich," said he, "so that the sympathies of the heart could not be excited. No striking fact existed which could be seized hold of to enlist the feelings. It was a development on both sides of land titles derived from the musty archives of the land office in the earliest days of its establishment, depending on warrants, surveys,

return of surveys, wills, field notes, diagrams, and all that involved, intricate business matter that seemed calculated to bind the wings of fancy and to extinguish every ray of imagination.

"It was one of those causes which tried the soundness and strength of the advocate. It tested the speed and bottom, the sinew and blood of the coursers.

"The Counsel who sat at the respective tables were among the ablest in Pennsylvania. Hemphill (William), Hopkins and Ross appeared for the plaintiff; Tilghman (Edward) and Sergeant for the defendant. Darlington and Edwards were also interested, but neither had yet achieved any special prominence.

"On Thursday morning the argument was commenced by Mr. Hemphill, who occupied the floor four hours and a half. In the afternoon he was followed by Mr. Tilghman, who spoke four and a half hours. On Friday morning Mr. Sergeant *commenced at half-past eight* and spoke five hours. In the afternoon Mr. Hopkins concluded, having spoken five and a half hours."

The lawyer from whom I quote was present on both days and sketched the four advocates.

At the bottom of each picture he added a line of poetry.

Who he was is a matter of conjecture. He believed in color, was not partial, but, like the poor brother in *Die Monate*, had compliments for all.

"Each of the gentlemen who spoke," said he, "is remarkable for a peculiar manner, which heard separately would be taken as a model of eloquence.

"Mr. Hemphill is distinguished for his easy, persuasive manner: He is of the Socratic school, insinuating his opinions in the form of questions, so fairly placed that the mind of the juryman cannot fail to answer to his wish, and thereby becomes in a measure a party in the argument. Throughout the whole he discovers his perfect knowledge of the human heart. At once ingenious and ingenuous, he carries such an air of sincerity that one could not suspect he was a lawyer but a friend to justice, coming in for justice's sake to urge the cause he espoused. The eloquence of the gentleman is finely described in the character of Ulysses:

" 'Soft as the fleeces of descending snows  
The easy accents fall and sink into the heart.'

"Mr. Tilghman is of another school, differing widely from the former. Open, frank, commanding, he convinces you that his cause needs none of those arts of persuasion, but confident in its justice, he exhibits the facts and the law in their clear and manifest character, and boldly appeals to the understanding of the juror. Nor was his art, though more covert, less perfect. The afternoon was sultry, and the jury from long sitting was fatigued. To arouse the attention and relieve the mind, particularly when an important point was to be impressed, he would seize from the field of imagination some happy illustration of his subject; or waken a smile by the flashes of wit. In listening to this gentleman we could not help owning the justice of the lines:

"Let arms revere the robe; the warrior's laurel  
Yields to the palm of eloquence."

"Mr. Sergeant has a strongly marked countenance, grave and full of thought. A feeling of deep interest is awakened even before he speaks. His art consists in his perfect artlessness. He begins in the plainest, simplest manner; the first impression upon the mind is, the good plain sense, the candor, the perfect understanding of the matter which he

displays. You travel on with him for some time without thinking of the man at all, because he has placed the subject before you in so plain and clear a light that the mind is wholly occupied with that. The hearer would say of him, as ‘Partridge’ in *Tom Jones* is made to say of Garrick’s acting, that it is no acting at all, for he does just as every other man would do under such circumstances. So the argument of Mr. Sergeant came forth with such perfect application to the mind that the hearer would think he should have said just the same thing. But, as Mr. Sergeant progresses in his discourse, although still plain to every comprehension, he becomes animated, as if deeply impressed with his subject, exhibiting occasional bursts of eloquence that electrify. To his lucid, powerful, well-disciplined mind it is given to unravel with noonday clearness the darkest labyrinths of involved fact and the perplexed mazes of law in a manner which evinces the highest intellectual strength and endowments. To this gentleman’s eloquence may properly be applied the lines of the poet:

“ ‘Though deep, yet clear; though gentle, yet not dull;  
Strong without rage; without overflowing, full.’

“Differing from either of the former gentlemen, Mr. Hopkins has a manner exclusively his own. Master of himself and of his subject, long disciplined in the field of controversy, accustomed to unravel the most intricate causes and perfectly acquainted with human nature, he casts his lively eye along the jury and seems to verify the fiction of the power to charm. He speaks low, yet extremely distinct, slow and emphatic. A smile plays upon his countenance; his gestures are easy and graceful, and the silver tones of eloquence steal on the heart, and we give ourselves up captives to the enchanter. But as occasions occur, if interrupted by doubts suggested by the court, or difficulties that really press upon him from the arguments which have been urged by the opponent’s counsel, he comes forth with singular impressiveness and power. Having overthrown, by the exercise of his strength, the obstacles that opposed him, the oily rills of his eloquence again resume their course. Thus for hours, which seem reduced into half their space, he leads you on to his own conclusions, and in the language of the poet:

“‘Unties the Gordian knot, familiar as his garter.’

"We do not intend to assign to either the palm of superiority, for we wished in succession to possess precisely the powers which we then saw exhibited. It is not necessary. Each gentleman may repose in the consciousness of his own power, and when occasion may offer for its exercise fear no antagonist."

But who won the case? I hear some reader inquiring.

The jury found for the plaintiff.



The Turk's Head.

## GENERAL JAIL DELIVERY.

"I hits 'em first and reasons with 'em afterward."  
*Officer Moore, of Chester County.*

"GENTLEMEN: I am here languishing.  
Yet, I wish to inform your honours respecting my present situation and the cruelty I have received from the Sheriff. If you do not see proper to cum personley to assist me, I beg you will send Some one as my Scul is fractured from a blow that the Sheriff gave me with a Bar of Iron; without cause or provocation he has committed this violence on me."

This old letter, dated May 3, 1821, signed by Thomas Vanderslice and addressed "to Judge Ross and Sociats," led me to investigate the condition of prisoners in Chester County from 1821 until 1840, when the new jail held its first "reception."

In 1792, and for several years following—as I have shown—the Sheriff offered his pris-

oners every facility of escape compatible with a decent regard for public opinion and the retention of his office. Had thirty years developed a different type of Sheriff, with a disposition to repress their love of freedom and abridge their prescriptive rights? Let us see.

Six months after the date of Vanderslice's letter, the prisoners state, through the medium of a Grand Jury, that they are supplied with good bread and otherwise treated with that humane attention due to their several situations.

A year or so later an evident inclination to narrow their opportunities of escaping appears by a recommendation that repairs be made "to . . . the bars of the window at the northwest room upstairs."

No criticism, however, ought to attach to the Sheriff, for he seems not to have been insistent upon speedy reparation. At the August term of 1823 the Grand Jury expressly states that: "No improvements nor alterations are recommended by the Sheriff more than was reported by a former Grand Jury, which it is expected will be shortly accomplished."

November of that year found the prisoners "warm, clean, and healthy," but apparently

both their comfort and public economy could be subserved by stoves for fireplaces and incidentally a little light could be admitted into the entry of the second story by placing a window "over the door that opens into the east yard, *which entry is entirely without a window or light.*"

In May, 1824, another jury suggests another window "in the west end of the entry."

The succeeding Grand Jury, looking at the "comfort of the prisoners and the Economy of Expenses," which somehow or other seem to be indissolubly linked together, thinks that "the introduction of tow beds filled with chaff or straw" would be most desirable. It also expresses its opinion of the Sheriff: "The inquest is satisfied that he is vigilant."

In 1827, an attempt is made to restrict the liberty of the female prisoners. Up to the beginning of this year it has been "inconvenient to keep the female part of the prisoners separate," but the Grand Jury of January Term discovers that this may be done "at small expense by strengthening the old kitchen door, opening a communication to the adjoining room, thence to the back yard."

During the following year, outside of a pool

of "stagnant water in the gaol yard," the inmates are reported as "enjoying all the comforts necessary in their situation."

Too many, in fact, for the Grand Inquest that visits them in August recommends "a projection over the door and window leading to the yard to prevent prisoners having easy access to the roof of the building."

How much better to draw off the "stagnant water" before denying them admittance to the roof! However, the prisoners of 1829 "appear to be comfortable (at least without complaint) and the discipline of the same, good."

Of adverse criticism every Sheriff received a share from an ill-informed and undiscerning public, but discriminating Grand Juries, intent on economy and "strengthening kitchen doors," from time to time published their vindication and that sufficed.

"As regards the recent escapes of prisoners from confinement," says a Grand Jury, 1829, "the jury are of the opinion that no censure rests on the Sheriff for neglect of duty; on the contrary, he is entitled to great credit for the prompt and vigorous measures taken to regain them."

Ten years after this return, another Grand

Jury gives us some idea of the ratio between the prisoners who were retaken and those who were not.

"It is true," so runs the report, "that no less than six of the prisoners, some of whom were imprisoned on charges of high crime, have recently escaped from the prison and *but one has yet been retaken*; but after a careful investigation and inquiry on the Subject the Grand Jury are free to say that no blame can justly attach to the Sheriff or his officers. Escapes have taken place under the administration of every Sheriff for many years past as we have been informed and each succeeding breach weakens the security of the prison."

Alas for the prisoners! the new jail is now "in a state of forwardness toward completion." In February, 1839, Thomas Walters, architect, is on hand prepared to explain its general construction "for safety, ventilation, and all the purposes for which it is designed," and in May of 1840 the Grand Jury that views it declares: "There is nothing wanting to insure the comfort and health of the prisoners, while the character of the workmanship is such as fully to secure the primary object of its erection —their safekeeping."

## JUDGE DARLINGTON

"We turn round chairs to the fire."

• • •  
Chuckle o'er increase of salary,  
Taste the good fruits of our leisure,  
Talk about pencil and lyre,  
And the National Portrait Gallery."

BROWNING, *A Likeness.*

ONE day, shortly after West Chester's Centennial, while looking at the clear-cut features of Judge Atlee, and reflecting on the flight of time, a visitor interrupted my meditations with the question:

"Pardon me, but which of these judges (pointing to their portraits) did I read about in my *Souvenir?*"

"Really," I replied, "not having received one I am unable to say, unless you can relate the incident."

"It was a story of 'Ye Anciente Pounde'" said he, "to which the burgess one evening committed a brindle bull. When morning dawned the gates of the pound were still locked but the bull was missing.

"The constable and burgess were angry because the law had been evaded and they had lost their fines and fees. So they went up to the old White Hall to talk it over, and one of these judges who was there said: '*May be the gates might have been lifted off their hinges.*'

"When he was through, the burgess, a man by the name of Ehrenzeller, looked at him a moment and said: 'Yes, and you're the very man who suggested it.'

"Now which of these judges was it?"

"Frankly," I replied, "I cannot answer your question, but you can probably find out by consulting your *Souvenir*."

I sat down to read Longfellow's *Keramos*. In a half-hour he returned with the name of Darlington on his lips. I pointed him out.

"Not that dignified gentlemen yonder!" said he in amazement.

"That is Judge Darlington," I said. "You have read Longfellow's *Keramos*, have you not?" I inquired; "If so, you know:

"All that inhabit this great earth,  
Whatever be their rank or worth,  
Are kindred and allied by birth  
And made of the same clay."

Isaac Darlington was admitted to the Bar of Chester County at the early age of twenty.



JUDGE ISAAC DARLINGTON



Tradition says that when the examining committee asked him if he was of age he carelessly replied: "Not quite." Judging from his finely developed form and nonchalant manner that he must have nearly reached that period, one of the committee remarked that a few days more or less were of no consequence, and the other members agreed with him. With the committee's report in his favor, the precocious minor forthwith took his stand among the veterans of the Bar.

Physically, he was equal to any demands that the profession might make upon him. In the smith-shop of his father he had swung the sledge-hammer, and on his father's fields in Thornbury he had done the laborious work of a farmer.

Intellectually, he was undoubtedly the equal, probably the superior, of any lad of his neighborhood. While his studies had not been extensive, his instructors had emphasized thoroughness, and at the early age of fifteen he had systematized his knowledge by teaching school.

With such a physical and mental equipment he entered the office of Joseph Hemphill, Esq., in 1799, and emerged a lawyer in 1801.

In 1821, after the Seventh Judicial District had been divided, Ross remained judge of the Courts of Bucks and Montgomery and Governor Heister appointed Mr. Darlington judge of the new Fifteenth Judicial District, composed of the counties of Chester and Delaware.

The appointment was a creditable one, for the appointee was a man of remarkably strong intellect and of excellent attainments in the law.

Like many other judges, however, he has been the subject of indiscriminate eulogy. I find it stated in the *History of Chester County* that "his adjudications were ever highly respected by the supreme tribunal of the State," that "with the people his opinions were treated with profound respect, and so implicit was their confidence in his judgment that it was enough that Judge Darlington decided a matter; they never dissented from or doubted the correctness of his decisions."

This picture is too highly colored. Appeals were taken from his decisions, and in my examinations of seven or eight reports I find fifteen reversals to eight affirmations. If some careless reader thinks that Judge Darlington may have been wiser than his reviewers, I need only remark that the Supreme Court of his

day contained such judges as Gibson, Duncan, and Tilghman.

Judge Darlington was cast in a stern mould, but an occasional jest—if meritorious—did not offend his judicial dignity. Besides, manners in his day were more familiar and accessible. As illustrative of this, an old directory relates a story of staging times, when the road between Philadelphia and West Chester was so miry and heavy and the *watering places* so numerous that drivers often took from breakfast time to candle light to come from the city to our borough.

On one of these occasions, when Judge Darlington and Olaf Stromberg were among the passengers, the judge remarked:

“What a long road from Philadelphia to West Chester.”

Olaf concurred in the opinion, but added, “It is a good thing for us that it is so.”

“Why so?” inquired the Judge.

“Because,” replied Olaf, “*If it was not so long it would not reach.*”

How unfortunate Daudet did not know of this incident! How much it might have solaced Tartarin in his Algerian journey as he sat in a similar coach with “those enormous, rough, wooden balls” which after a few hours’ journey

finally established a raw spot in the small of his back.

Strangers strolling through the court-rooms of the various counties often wonder what manner of men judges really are. On the bench they talk, and, as someone has observed: "when clothed in gowns they stalk very much alike." Off the bench most of them are human. To my mind, Judge Darlington was a very companionable man.

The inventory of his estate furnishes us with a glimpse of his library, and a library, to some extent at least, reflects the man.

As I look over these books, I find myself in pleasant company. Hume and Smollett and Bissett are here, so are other famous English historians. Mingling with them are such novelists as Fielding, Richardson, Scott, and Dickens. Nor are essayists lacking—Addison and Steele are close together, and not far from them is my old friend Charles Lamb. Here are books to suit every taste, from the *Police Records of London* to *Disquisitions on the Plurality of Worlds*.

Of poets there are a great number—Milton, Pope, Burns, Moore, Campbell, Cowper and Young.

Which of these had the judge been reading before he attempted an opinion in rhyme. In rhyme? Yes! On the trial of a negress at the August Term of Oyer and Terminer, 1834, James Davis was called as a witness by the Commonwealth and testified. After the trial was over he claimed witness fees for four days' attendance at court.

The commissioners refused to pay him, on the ground that he had not attended court "alone as witness," but had appeared as clerk for the Clerk of Courts, had performed the duties of that officer in his absence and had been paid by him for his services.

After hearing argument on the matter, Judge Darlington spent an evening in his library with the lesser poets and then filed the following opinion.

"Case between James Davis and the Commissioners of Chester County:

"James Davis and Commissioners  
Have got together by the Ears  
In high debate or if you please  
A snarl about a claim of fees  
And want advice. The case is here  
At August Court, Oyer and Terminer  
The Clerk (as often chanced) *non est*  
*Inventus* from the office, West.  
James did the duties in the Court  
As clerk for boss and was paid for it,  
Although no written deputation

Still as a clerk he held the station  
Such deputation 's not material,  
When duties are but ministerial,  
Such as administering an oath  
See case of Reigart and McGrath. (1)  
His business was to be in Court,  
Employed for that he was, and for 't  
Was paid. A negress then was tried  
And Mister Davis testified  
As witness for the state, and hence  
Claims fees for four days' attendance.  
Commissioners reply, No, No!  
You were not there as witness, though  
You did attend in Court, we wot  
You were perpetually there *pro Prot*,  
Unless you cram two days in one,  
Or prove you did attend alone  
As witness there; you cannot wrest  
Your fees from out the public chest.  
They're right, and with the Public, I,  
Retrenchment and Reform will cry  
Tis said ere this when people's backs  
Were loaded down with many a tax  
As State and County Quota and  
What not, Commissioners took a stand  
For every tax they charged a day  
And then took double, treble pay.  
The People murmured, and in time  
The law gave them a sum *per diem*,  
And fixed that sum their legal pay  
One dollar fifty cents per day.  
On this same ground the Courts have gone  
That none can serve *two days in one*  
And always question in the case  
As well they ought—How many days  
Did you attend as Witness here,  
*Compelled for that same cause to appear?*  
Squire Freytag 'tended Court as Evidence  
But also to return Recognizance  
The Court soon docked him one day's fee  
Because upon that day d' you see  
He attended not as Witness (2) and

So arbitrators can demand,  
Not by the suits referred them, they  
Receive their fee, *so much per day* (3)  
The Doctrine strict and bearing thus hard  
Was used in *Curtis versus Buzzard* (4)  
And Job late Crier of our Court  
Was once refused a Claim o' the Sort.

*Hence I decide against the fee  
As the Opinion of yours at D.*

Election Day, 1834

- (1) 16 Sergt. & Rawle, 65.
- (2) 6 Binn, 397.
- (3) 4 Serg. & R., 81.
- (4) 15 Serg. & R., 21.

At the November sessions of 1830, Edward Williams was tried before Judge Darlington for poisoning his wife. The crime was evidently brooded over for months and was consummated with appalling malice. When the case came on for trial, notwithstanding the zeal and eloquence of William H. Dillingham and Townsend Haines, who had been assigned by the court as counsel for the prisoner, the evidence offered by the commonwealth was so clear and convincing that the jury could not do otherwise than convict. So affected was the foreman that his voice could scarcely be heard as he pronounced the solemn ver-

dict, but the wretched man whose temporal fate was sealed by that doom was unmoved and apparently unconcerned.

In sentencing him Judge Darlington said:

"Before pronouncing the awful judgment of the law upon you we desire to address you a few words upon your present lamentable situation:

"You have been convicted and are about to suffer the penalty of the law for a crime of so startling a kind and of so cruel and diabolical a character that the mind of man is slow to believe, and requires the most satisfactory evidence before it will be convinced of its perpetration by a reasonable and accountable being. A murder—a murder of the wife of your bosom—not upon a sudden quarrel, or burst of passion, which might cause reason for a moment to totter in her seat, but a cold, studied design to kill her, an abiding malice of long-standing, wickedly concocted and brooded over, finally put in execution by the diabolical means of *poison*, procured, prepared, and mingled for her by your hand.

"Such is the heinous character of the offence for which you have been indicted, tried, and convicted. You have been tried

before an impartial, intelligent, and conscientious jury of your own selection—in the midst of a community ever active to the cause of the innocent, and proverbially proven to lay hold of the least defect of proof or doubt of the mind lest the innocent should possibly suffer. You have had the assistance of the ablest of counsel, who with great credit to themselves, have put forth in your behalf all that learning, zeal, industry, and philanthropy could do for you.

"Your hearing has been a patient and serious one, and the solemn verdict pronounced upon you, of *guilty of murder in the first degree*, was received with a murmur of melancholy approbation by all who heard the evidence . . .

"May you be enabled to offer to God the sacrifice of a broken heart and a contrite spirit and to pray that, through the merits of our blessed Lord and Savior Jesus Christ, you may be enabled to repent of your sins, that He would graciously fill you with that Godly sorrow for sin which worketh repentance to salvation, not to be repented of."

After further admonition he imposed the sentence prescribed for murder in the first degree.

Six weeks later, on December 31, Williams paid the forfeit of his life.

"Notwithstanding the badness of the roads," said a spectator in describing the execution, "two or three thousand persons were assembled to witness the solemn spectacle."

Spectacular at least it must have been, for the "National Blues," commanded by Captain Apple, attended Williams to the ground; so did Dr. Smith's Rifle Company and the Chester and Delaware Horse.

On the scaffold Williams confessed his guilt, acknowledged the justice of the sentence, and after thanking the sheriff for his kindness turned to the hangman with the strange request, "Let me drop easily."

On September 2, 1834, about three years after the conviction of Edward Williams, Charles Bowman was brought into Court to hear the sentence of the law from the same Judge for a similar crime:

"You have been indicted for the murder of Jonathan McCuen, a poor blind man of your own color. It were easy enough to perpetrate the horrid deed upon anyone, however perfect might be his sight, but the victim of your malice was always more completely

within your power, on account of his blindness. You had for a long time contemplated this wicked act and at considerable labor and pains procured the poisonous drug—but you selected for your murderous purpose the day of his return to his family after a few weeks' imprisonment for a small debt, when he appeared to reach his home with liveliness and joy, and there, while partaking of his first homely meal with his family, he unconsciously swallowed down the deadly arsenic which you had just before mingled with his food; the consequence was inevitable; his agonizing and violent death followed and your wicked purpose was accomplished."

In commenting on the case it was remarked at the time that it was "the first instance in the State of an execution under the new law."

"There was a solemn and fearful expense and sympathy excited by the reflection that a human being was *privately to be put to death.*"

"Let us go hence!" exclaims some sympathetic soul. "Conduct us into the Common Pleas." Willingly will I do so, and with pleasure will I introduce you to the tallest member of the Bar.

Tallest did I say? Yes, tallest—and wittiest. A man with a decided stoop and confirmed and provoking shortsightedness. The book he reads from is not more than five inches from his face. For fifteen minutes with painstaking accuracy he has been quoting line after line. Finally he halts to take a breath. As he does so the Judge looks at the clock, notices the hour hand has passed the figure five, and observes:

"Mr. Pennypacker, do you not need a little more light?"

"Did Your Honor address me?" asks the attorney.

"Yes, I inquired if you did not need a little more light?"

"I beg Your Honor's pardon, I thought you were addressing counsel on the other side. If the Court pleases, it's the other side that needs the light."

But counsel in Judge Darlington's time were not always so thoughtful.

On May 13, 1831, the learned Judge made the following memorandum:

"During the trial of the cause wherein Joseph Hoskins is plaintiff and Joseph H. Pratt defendant, on the 12th day of May,

1831, Benjamin Tilghman, Esquire, attorney and counsel of the plaintiff, in speaking before the Court of and to William H. Dillingham, Esquire, attorney and counsel of the defendant, did use and utter provoking and insulting language, of the said William H. Dillingham, Esquire, and thereupon the said William H. Dillingham, Esquire, did immediately assault the person of said Benjamin Tilghman, Esquire, in open court, which conduct in both and each of these gentlemen is a contempt of the court and tending to obstruct and interfere with the due administration of justice; Therefore:

"Ruled that the said Benjamin Tilghman, Esquire, and William H. Dillingham, Esquire, appear before the Court on Monday the 13th of June next, at 10 o'clock in the forenoon, to answer and receive the judgment of the Court for the said Contempt

By the Court."

Both contemners of justice were prominent characters, Dillingham being favorably known for his literary tastes and philanthropic deeds. Not that he was lacking in zeal and industry as a lawyer. On the contrary, he had early demonstrated his ability as Deputy Attorney-

General and his attention to business had resulted in a large clientage. Students sought his office eagerly. P. Frazier Smith had read law with him two years before; Volney Lee Maxwell was a student at this time; so was John M. Brinton. Had the encounter occurred

A handwritten signature in cursive script, appearing to read "Edw d Tilghman". Below the signature is a stylized, symmetrical flourish or scrollwork design.

between Tilghman and Dillingham's latest student the result could have

been predicted with mathematical certainty; but to the case:

On the day appointed Mr. Tilghman filed the following answer:

"Duty and feeling alike induce me to declare that if during the trial of Hoskins *vs.* Pratt anything occurred before the Court which on my part was inconsistent with its dignity it is to me a source of sincere and serious regret. In that event an apology is due to the violated majesty of the Law which I desire thus to record.

"At the same time a regard for truth calls upon me to add that as I am conscious no disrespect to the Court was intended, so I submit that none was on my part manifested."

Mr. Dillingham also appeared and declared in his turn:

"That the whole course of my professional conduct forbids the idea of intentional disrespect to the Court, and I solemnly disavow all such intention.

"Respect for the due administration of justice, for the Court, and the Law, is a paramount consideration, and I do now make my acknowledgment to the Court and deliberately express my regret for the transaction."

*W<sup>t</sup> Dillingham*

After weighing their demerits in the balances of justice the Court determined that Mr. Dillingham was the greater offender by one ninth.

*And now to wit the 13 day of June 1891 - It is ordered and adjured that Benjamin Tilman pay a fine of forty dollars and that W<sup>t</sup> Dillingham pay a fine of fifty dollars to the Commonwealth and be in the body of the Sheriff until he has paid.*

## DINNER TO LAFAYETTE

"Ah, no! those days of auld lang syne  
We never can forget,  
When with our sires to Brandywine  
Came gallant Lafayette."

DR. WILLIAM DARLINGTON, *Lafayette at Brandywine.*

THE long-expected day had at last arrived. The hope expressed by Judge Darlington, a year before, that the illustrious guest of the nation would be inclined to revisit the ground where he first fleshed his maiden sword was about to be realized. Lafayette was at hand.

Of that fact there could be no doubt. Thirteen guns had saluted him at Darlington's Woods, and ten thousand voices had welcomed him on High Street. Hail to the Hero of Two Worlds! Hail to the Son of Washington.

It was a stripling of twenty who had fought at Brandywine; it is an old man of almost seventy who reviews the troops on Matlack's field east of the Friends' meeting-house on July 26, 1825. Fifty years! Eventful years in the life of Lafayette! Hopeful years! Sorrowful years some of them, but eventful years all of



LAFAYETTE



them. The record of his life is almost completed, a few lines more and then—La Grange.

In the revolt against absolute power, despotic ministers, insolent nobles and greedy favorites; in the greatest drama of the centuries; who played a more glorious part? To this worshiper at the shrine of liberty, to this hater of despotism and privilege, it was given to do much and suffer much for the cause of freedom. Friend of republicanism and defier of Robespierre, West Chester welcomes you.

Every one of the forty who sat down to the table in the Grand Jury room of the courthouse felt these sentiments and solicitously awaited their expression. At length, Colonel Joseph McClellan—a captain in the Continental Army under Lafayette—rose and addressed his former commander as follows:

“General, it is our happiness to be appointed by our fellow-citizens to greet you upon your visit to the scenes of your youthful gallantry on the banks of the Brandywine, and to bid you a sincere and cordial welcome to the bosom of our country. Language, indeed, can but feebly portray the joyous and grateful emotions with which we behold amongst us, after a lapse of eight and forty years, the illustrious friend of

human rights, who relinquished the endearments of his domestic circle in a distant land to aid the fathers of our country in their struggle for independence, and who on this ground sealed with his blood his devotion to the cause of American liberty.

"In you, sir, we recognize with the profoundest respect and veneration the early, disinterested, and steadfast champion of our Washington, our Wayne, and their gallant compatriots-in-arms; the youthful volunteer, who shared the toils of our fathers to secure the blessings of republican freedom to our land, and who, by the favor of Heaven, has been preserved to witness the happiness and receive the benedictions of their grateful offspring.

"We exult in the contemplation of a character whose pure, intrepid, and uniform devotion to the rights of man has been equally conspicuous in the battlefields of the western, and in the councils, the courts, and the dungeons of the eastern, hemisphere.

"We rejoice that a signal opportunity has been afforded to our countrymen to repel the slander of despots and their hirelings that republics are ungrateful, and although the plain and unpretending citizens of this ancient county

of Chester do not presume to vie with their brothers of our opulent towns and cities in the splendor of your reception, let me flatter ourselves that you will receive, with your wonted kindness, the spontaneous and unaffected homage of a happy community, who welcome you with eyes beaming with reverence and delight and hearts filled with the purest sentiments of gratitude and affection."

Rising in his place Lafayette replied with emotion:

"While I have, with unbounded gratitude, enjoyed the fondly anticipated happiness to meet in this town the citizens of the county of Chester, and the additional pleasure to be here most kindly welcomed, in the name of the people by an old companion-in-arms, I have also to acknowledge the affectionate greetings that have this day hailed your brother-soldier on the grounds of one of our most important battles.

"Although, owing to some accidental occurrences, victory was not that day on our side, the manner in which it was disputed by our patriotic troops did, no doubt, contribute to inspire several of the British leaders with a spirit of caution more than once beneficial to us. The thought of its having been my first

action under the American standard and our great and good Commander-in-Chief, in company with your gallant Chester County man, my friend, General Wayne, and my other comrades; the honor to have mingled my blood with that of many other American soldiers on the heights of the Brandywine, had been to me a source of pride and delight near half a century before, and it has lately been an occasion of the most honorable, kind, and gratifying remembrance, as it is now an object of your friendly congratulations.

"Happy I am, also, in your testimonies of affection and esteem for my conduct in the vicissitudes of my life on both hemispheres, and I beg you, my dear sir, and you, gentlemen of the committee, to accept in your own name and in behalf of the people of Chester County, my affectionate and respectful acknowledgment."

At the conclusion of the dinner thirteen regular toasts were drunk. The seventh, was to "The Nation's Guest: While our country reveres and lauds her Washington and our county justly boasts of her Wayne, the votaries of rational liberty in both hemispheres claim an interest in Lafayette."

When this had been approved with cheers, and Captain Joseph Pearce's company of Junior



THE BRANDYWINE ABOVE CHADSS FORD

*From a Painting by Cohen*



Artillerists had played the Marseillaise hymn, Lafayette proposed the following:

"The County of Chester and the memory of her gallant citizen, General Wayne: May the blood spilled by thousands with equal merit in the cause of independence and freedom, be to the ensuing generations an eternal pledge of unalloyed republicanism, federal union, public prosperity and domestic happiness."

The last toast was offered by Joseph S. Lewis, of the City Councils of Philadelphia. It was left for a greater Lewis, more than a half-century later, to honor his memory by a fitting oration on the field of Brandywine.



Birmingham Meeting House.  
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## JUDGE BELL.

"I congratulate thee on thy new career."

GOETHE, *Faust*.

ON Monday morning, November 16, 1846, the members of the Chester County Bar met at the office of P. F. Smith and unanimously adopted the following resolutions:

"*Resolved*, that the Hon. Thomas S. Bell while presiding in the Courts of Chester County has won our esteem by the courtesy of his deportment and our confidence by his ability, integrity, and impartiality in the discharge of his official duties.

"*Resolved*, that in retiring from the bench he carries with him our best wishes for his prosperity and continued ability to discharge the more arduous duties to which he has been called."

These resolutions were at once communicated to Judge Bell by Townsend Haines on behalf of the committee, whereupon the judge made the following reply:

"Gentlemen: I receive this manifestation of your kindness with the most lively emotion. Though conscious that I cannot appropriate to myself, without very many grains of allowance, the language of eulogium in which it has pleased you to clothe the resolutions just presented to me, I accept them as the evidence of your convictions that I have honestly and faithfully endeavored to discharge the difficult duties appertaining to the high and responsible office with which I have been clothed.

"If while engaged in administering this delicate trust, where every feeling should be scanned and criticised before it is indulged and every word weighed before it is uttered, I have at any time lapsed from the untiring patience and forbearance which ought to be characteristic of the judge, I pray you to ascribe it to the infirmity of man's nature which will not always be governed and not to any adverse personal feeling cherished against any of your number. Such a feeling would be alike repugnant to my nature and to the proprieties of my station.

"While preparing to sever the relation that has so long subsisted between us, I have experienced a sentiment of melancholic regret

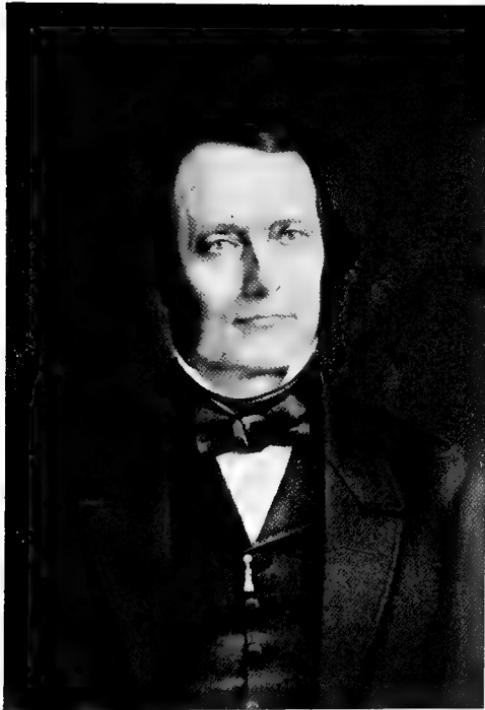
which I did not anticipate and cannot express. A recollection of the almost unwavering kindness, courtesy, and respect which the Bar of this judicial district has extended to me and the personal friendship which for so many years has marked my intercourse with its members may well suggest such a sentiment, while anticipating the occasion now here that is to sever the cords that have so long bound us together.

"For your many kindnesses and courtesies I pray you accept my warmest thanks; your friendship I beg you to permit me to retain.

"And now, gentlemen, farewell. Accept my best wishes for your continued prosperity and happiness."

The Fifteenth Judicial District was losing its president after seven years of devoted service. Recognizing his ability, Governor Shunk had appointed him to be a judge of the Supreme Court of Pennsylvania in place of Hon. Thomas Sergeant.

Judge Bell at this time was forty-seven years of age. A little more than a quarter of a century had passed since he came to West Chester, an unknown young man, to battle for a position in the legal profession. He



JUDGE THOMAS S. BELL



had fought—fought fairly—and won. In two years he received the appointment of Deputy Attorney-General for Chester County and held that office for almost five years. When the convention to revise the Constitution of the State met, in 1837, Thomas S. Bell was there as a delegate from the Senatorial district composed of Chester and Montgomery Counties. Two years later, Governor Porter appointed him to succeed Judge Darlington as President Judge of the Fifteenth Judicial District.

It is doubtful if the Governor could have made a more acceptable appointment—at least to the Bar. The appointee had a fair reputation for learning and advocacy. He reasoned well and spoke with sufficient animation and fluency, and was intelligible.

Much was expected of Thomas S. Bell on his promotion to the bench; much was realized.

He not only performed the usual duties of a judge with fidelity and care, but he interested himself in the betterment of conditions at the County Poorhouse, and pleaded strongly to the citizens of the county, through his charge to a Grand Jury, for voluntary contributions to aid the State in erecting an institution where the poor and helpless lunatic

might find an asylum for his woes and probably eventual cure of his horrible malady.

"In calling your attention to this subject," said he, "I do not feel that I am overstepping the limits of official duty. It is in truth a great public measure in which all of us have an interest and may therefore with propriety be placed among those popular topics which may well engage the reflections of a Grand Jury."

Of his judicial reputation for impartiality, Judge Bell was careful—scrupulously careful. He frequently denied himself the pleasure of society, fearful that someone might inadvertently discuss, in his presence, cases about to be considered in his court, which by reason of their importance or interesting features would naturally present themselves as subjects of conversation.

On August 8, 1845, Judge Bell was called upon to sentence Jabez Boyd for murder. Following the custom then established, he addressed some prefatory remarks to the convict, of which I quote a part:

"Upon evidence which precludes the slightest doubt of the righteousness of the verdict recorded against you, you have been convicted of the unprovoked murder of an innocent

and unresisting child, whose very helplessness ought to have shielded him from harm.

“Taking advantage of the confidence a father was entitled to entertain, that in this neighborhood at least the asylum of his dwelling was a sufficient guarantee of the safety of his infant children, you were enabled unopposed to break in upon the sacred sanctuary and cruelly to stain its hearth with the life blood of one of its cherished inmates. Watching the retiring steps of the parents on their way to the House of God, with the full intent of murder rankling in your bosom, you assumed the guise of friendly feeling, and, on a day consecrated to the worship of the Most High, treacherously entered a peaceful home, to leave it the theatre of a crime almost unparalleled in atrocity; and this tragedy was perpetrated to gratify one of the basest passions of the human heart.

“To satisfy your desire of gain, you have thrown away your life and even perilled your soul.”

About a year after the appointment of Judge Bell to the Supreme Bench, he delivered the opinion of the majority of the court in *Parker vs. Commonwealth*, where the defend-

ant below had been convicted upon an indictment framed under the Act of 7th of April,

*Jas. V. Bell* 1846, entitled, "An act authorizing the citizens of certain counties to decide by ballot whether the sale of vinous and spirituous liquors shall be continued in said counties," the point being whether the act was in truth of binding force.

By a three-to-two decision the court held the Act of Assembly to be inoperative and void. Burnside and Coulter dissented. Coulter riddled Bell's opinion and concluded with the sage observation: "The people, who have the hearts to feel, are the real safety of the minority, because they will never commit wilful oppression and injustice on their peers. Virtue and knowledge are the pillars on which the superstructure of our republic rests. The school law and the law under consideration are designed to promote both. I rejoice that my deliberate convictions lead me to the conclusion that the Act of Assembly under consideration is entirely constitutional. I would not throw a pebble in the way of the modern Hercules who, under the similitude of the people, is laboring to destroy much evil."

Despite the virtues of Judge Bell, and they

were many, I never read the majority opinion of the court in this case without regretting that Chester County furnished the man to write it. She partially redeemed herself, however, when she refused to place him again upon her bench. In the campaign of 1851 the people elected Haines by almost one thousand majority.

A few days ago I asked an old gentleman who had passed his ninetieth milestone if he remembered Bell. "I remember him well," said he. "I can see him yet coming into the old Black Bear, where I boarded, calling for brandy. Now the bottle that Babb used to set out had a very small opening, but its narrowness didn't affect the judge. He entertained the landlord with his talk till he filled his glass to the brim; then he took a sip and walked slowly from one end of the barroom to the other; then, another sip and another walk, and so on to the end."

After he ceased to be a judge of the Supreme Court he resumed the practice of law and was concerned in a number of important cases, of which the most interesting, at least to the citizens of southern Chester County, was that of Rachael Parker's petition for freedom in the Circuit Court of Baltimore.

Rachael and her sister Elizabeth had been abducted from East Nottingham Township as runaway slaves.

The trial lasted for several days. Finally the claimant, unable longer to resist the clear and convincing testimony on the part of the petitioners, consented to verdicts giving them their freedom.

In stature, Judge Bell was a small man, who attempted to make up in carriage what he lacked in height. The boys who played in the streets could recognize his walk by their ears alone, and upon hearing that "one! two!; one! two! three!" would say to one another without lifting their eyes, "Here comes Judge Bell."

As a rule, both on the bench and at the bar, Bell was courteous, notably courteous. I know of but one exception. It occurred in a trial of a case before Judge Haines. Thaddeus Stevens represented the other side. Bell objected to certain questions as "leading," and remarked to Stevens: "Remember, Mr. Stevens, you are not now in the House of Representatives." Quick as a flash came the retort from the Great Commoner: "And you, Mr. Bell, will do well to remember that you are not now on the Supreme Bench."

## THE NEW COURT-HOUSE

"Stand now, and judge thyself!"

COWPER, *Expostulation*.

AT the July term of Quarter Sessions, 1845, the Grand Jury recommended the erection of a court-house and offices together, in one plan, and gave as their reasons:

"The precarious security which the present buildings afford the most important and precious papers of the county, the destruction of which by fire, to which they are hourly exposed, would produce interminable confusion, bringing the oldest titles and most established claims into doubt and carrying litigation, dispute, and distress into every quarter of the country."

At the October Term of Quarter Sessions another Grand Jury reported:

"The various offices in which the records are kept are insufficient, cramped for room, crowded to overflowing with documents and inconvenient in many respects; that unless

these offices are extended and enlarged a very large amount of papers must necessarily decay or become destroyed for want of sufficient room to bestow upon them that care which they demand."

When this report was published, opposition expressed itself vigorously:

"Chester County's schools," said a citizen, "are languishing for want of funds; her lands are scarcely half-tilled and lack buildings for comfort and convenience; many of her streams are scarcely passable for want of bridges, and in some instances communications between contiguous neighborhoods are entirely cut off.

"We are told that bridges cannot be had because our taxes are too great, and yet we are asked to build court-houses and public offices which are not now and for years may not be necessary.

"For whose benefit? For the ease and comfort of a few briefless lawyers and perhaps a larger sprinkling of speculators, loafers, and loungers.

"The court-house is sufficiently large and comfortable for the transaction of all legal matters pertaining to the county. That is its use. It was not erected to enable those

learned in the law to display their talents, nor for those of less calibre their want of talents, nor yet for idlers to while away their time in listless lounging."

The question, "How shall the new court-house front?" excited even more debate than its necessity.

An eastern front was regarded by many, who contended, as a matter of taste, that a long building should not be placed across a narrow lot, and as the county lot was deeper from east to west, the county buildings should take that direction. It was further suggested that the trees on the eastern front, which afforded an agreeable shade, had been planted there with the understanding that by the time new buildings were erected they would make a pleasing appearance *in front*.

On the other hand, the advocates of a southern front maintained with warmth that every man acquainted with the principles of building knows that a southern front is always secured if possible.

"It is well known," said one of them, "that the present court-house had originally a southern front, and that to enlarge it an eastern front was necessary, because the alley and the

line of the public lot prevented its extension in a northern direction.

"The country people are interested in having a southern front. It is of some concern to them to have an easy entrance, free from risk, and a dry pavement outside the door. The difficulty and danger of climbing up the ascent to the present court-house is known to all who attend the court; while the south pavement was dry for weeks, the east pavement was thickly coated with ice."

"To give any good reason why it should front east," exclaimed another, "would in my humble opinion puzzle not only a Philadelphia but even a West Chester lawyer."

It was openly alleged that "merchant princes" favored one front and "princely bankers" the other.

By the beginning of 1846, the controversy became so heated that one newspaper felt obliged to notify the combatants that future communications on "fronts" must be quite brief.

What would contribute most to the comfort, convenience, and accommodation of the people? Such was the question that presented itself to the Commissioners.

At last a Solomon appeared who declared:

"Since the building will be erected on a corner lot, having streets on either side, let a plan be prepared with *two* fronts."

Elaborating his position, he said: "Independent of all considerations of local interest or the real advantage of fronting south or east, I think the architecture, however elegant, would fail in its effect if any considerable part of its unfinished proportions were liable to be a prominent feature to the eye of the observer, as would be the case did the building front but on one street, while upon the other its long, slab-sided walls presented such a naked aspect as that they could not be distinguished from the side of a barn or railroad embankment."

This last illustration proved effective, in part at least, for the architect provided for an eastern and a southern entrance.

The corner-stone of the court-house was laid on July 4, 1846.

At half-past ten in the morning the Commissioners, the contractors, and Judge Bell, escorted by the National Guard, proceeded to the courtroom.

Before the Judge rose to speak, the Committee of arrangements placed on the bench in front of him two glass jars: one, exhumed

from the western wall of the old court-house, where it had been placed in 1821, when a projection was built; the other and larger one containing the name of the two grand juries recommending the erection of the court-house, and of the commissioners and judges approving the same, the names of the architect and contractors, and of the workmen and furnishers of materials, Hindman's map of Chester County, a front and a perspective view of Bolmar School, a list of the physicians of the Borough of West Chester, a list of the clergy, copies of the newspapers of Chester County, the old and new constitution of the State of Pennsylvania, the Declaration of Independence, the Constitution of the United States, a Polk and Dallas songster and coon exterminator, specimens of shirtings, sheetings, calicoes, and cassimere of American manufacture, a military button and bullet found on the Brandywine battleground, together with numerous other articles, accompanied by a salutatory letter to future generations, doubtless explanatory of such a miscellaneous collection.

With these legacies to posterity before him, ready to be deposited in the corner-stone, Judge Bell delivered "a chaste, eloquent, and appropriate address."

## TWO REJECTIONS.

"I do not like thee, Doctor Fell;  
The reason why I cannot tell  
But this I know and know full well  
I do not like thee, Doctor Fell."

—THOMAS BROWN.

IN November, 1846, John M. Forster, Esq., of Harrisburg, was appointed President Judge of the Seventh District to fill the vacancy created by the elevation of Judge Bell to the bench of the Supreme Court.

Immediately upon his appointment the *American Republican and Chester County Democrat* gave him a most cordial greeting:

"Mr. Forster comes to us with the reputation of a sound lawyer and an upright man, well qualified by legal learning, integrity, and industry for the high and responsible duties of the station to which he has been appointed.

"In politics, Mr. Forster ranks as a firm and decided Democrat; but we are pleased to see that the leading Federal paper at the seat of government approves very warmly of his appointment and commends him as a jurist

and a man to the favorable regard of the citizens of this district."

On November 17, Judge Forster took his seat at West Chester as President of the Court of Quarter Sessions.

The same paper noted his presence there and remarked:

"We are pleased to learn from gentlemen who were present that he bids fair to become a very popular and efficient judge. All speak of him as being a gentleman whose bearing cannot fail to prove acceptable, not only to the legal profession, but to his fellow-citizens generally."

Less than four months afterwards the *Village Record* said:

"We think the time has come when it is our duty to speak out. We are well convinced that we speak the sentiments of the mass of the Bar and the majority of the people who have attended our late courts when we say that Mr. Forster is not qualified for the high station to which he has been nominated. He is deficient in that promptness of action and facility of expression so necessary to a presiding judicial officer, and not less unfortunate in a want of capacity to conduct with ease



JUDGE JOHN M. FORSTER



and rapidity the ordinary business which must be done regularly at every term. His charges to grand juries are represented by those who have heard them as very confused and jumbled in matter and manner and calculated to mislead and bewilder those whom they were intended to enlighten and instruct.

"He has not the proper capacity to push business ahead, and under his administration (we speak the sentiments of the ablest lawyers at this Bar) the trial list, which under Judge Bell was always kept up, would inevitably have soon become so far behind as to preclude the chance of bringing cases to trial under two or three years, to the great delay of justice, or at least it would involve the county in the expense of extra courts to keep the business of the county up to its proper position. Such a state of things would afford a strong argument for a division of our territory into new counties.

"These deficiencies of Mr. Forster, although important, are trivial compared with his want of that high and ready legal knowledge required to enable him to discharge with ability the functions of his office and forward with promptness and decision the proper administration of justice between man and man.

Many of his legal decisions, we are told, are so grossly erroneous as to be the subject of remark and surprise to the bystanders unlearned in the law.

"We do not admire the delicacy of feeling that would incline a man to thrust himself on a district that has already repudiated him as unworthy of its confidence; nor can it be expected that, if he should be confirmed, the people will feel much satisfaction in the decisions of one whom the Senate has once rejected for incapacity and whose rejection has been received with favor by this community."

The "communications to this newspaper" were expressed in even stronger terms:

"His imbecility of mind and body and lack of legal learning," writes one, "disqualify him for the discharge of his judicial duties.

. . . With a lazy, laggard judge on the bench, in the downhill of life, without the habit or physical power to endure hard study, rusty in the law, our court would soon be crowded with business the year round."

When the question of his confirmation came before the Senate, in February, 1847, Senator Gibbons said: "A single petition signed by a few members of the West Chester

Bar has been presented praying for confirmation. That was to be expected. Lawyers are always ready to sign such petitions. When called upon to express an opinion of a new judge, whose fate in the Senate cannot be known until he is tried, they are not often found in opposition. *On such a question there is not such a class of moral cowards in Christendom as the members of the Bar . . .* Some of the very petitioners have written private letters urging the rejection of Mr. Forster exclusively on the ground of a want of capacity."

It was shown to the Senate, by Mr. Williamson, that the ablest and most experienced lawyers were against Judge Forster's confirmation. Townsend Haines, who was recognized by many citizens as the head of the Bar, after expressing the highest regard for Judge Forster's character as a gentleman, nevertheless asserted his deficiency in those acquirements and qualities necessary to constitute a good judge. "I am perfectly satisfied," said he, "that the members of the Bar and the people of the district are hostile to his nomination, and I, in their name and in their behalf, ask the Senate to reject it."

Judge Forster's friends urged, what was doubtless true, that the judge was of a sensitive turn of mind, and that the new location and other circumstances had operated upon this feeling and prevented him from exercising his faculties with that energy which under a different state of things would have been exhibited.

The Senate, however, showed little appreciation of this sentimental plea, and after a short debate rejected the nomination.

On March 16 the Governor sent in the name of Benjamin Champneys. This nomination was instantly and unanimously confirmed. Judge Champneys, unfortunately, declined the appointment, whereupon the Governor named James Nill, Esq., of Franklin County, but the Senate refused to consider the nomination of Mr. Nill and adjourned without action.

Judge Nill came to Chester County under very adverse circumstances after the rejection of Judge Forster for incompetency. He was not without sensitiveness and felt embarrassment upon taking his seat on a bench vacated in that way.

But he assumed the duties and met with a similar fate.

The first term he officiated someone suggested that his name was "vacuous" and its possessor was equally so. By January, 1848, others were repeating the statement. The fight was on.

The majority of the Chester County Bar were against his confirmation. Of the West Chester members who rallied to his defense, the most prominent were Pettit, Hickman, Hemphill, Brinton, Rennard, Davis, and Pearce. With them were Associate Judges Sharpe and Jones.

Associate Judges Engle and Leiper, of Delaware County, also supported Judge Nill, and fourteen members of the Franklin County Bar, who had known him as an active practitioner at Chambersburg, lauded his "unblemished character as a man and his highly respectable talents and unbending integrity as a lawyer."

But the most conclusive evidence of his judicial fitness was the letter of Judge Black, in which he said:

"I have heard not without some surprise that objections would be made to the confirmation of Mr. Nill's nomination as Judge of the Chester and Delaware District. I know

him intimately and well. He is a good lawyer and a most thoroughly honest and conscientious man. *If a judge of this description will not answer for the people of that district they are hard to suit. I do not know the man in whose hand I would consider my own life, character, or prosperity more safe than in his.*"

T. E. Brewster, Esq., of the Philadelphia Bar, who had been present at a session of Judge Nill's court in Delaware County and had argued an important case before him, expressed himself as greatly pleased at his familiarity with judicial practice and especially with his readiness in dispatching business. "His charge to the grand jury," said he, "was certainly worthy of great commendation and his deportment on the bench was an example of unaffected kindness and personal dignity."

According to Justice Smith, of Delaware County, his people were with great unanimity in favor of Judge Nill. "Nine-tenths of our citizens," he declared, "would like to see his nomination confirmed.

"The straightforward and impartial manner with which he has administered the criminal justice of this county, without regard to the persons upon whom the penalties of the



JUDGE JAMES NILL



law might fall, has greatly increased his popularity amongst us."

On the other hand, the committee of the Senate who reported against his confirmation justified themselves by saying that they were met by nine-tenths of the members of the Bar of both counties, who gave them such evidence of incompetency as would convince anyone that Judge Nill was unfit to discharge the duties of his position.

Among the remonstrants from Chester County were Joseph J. Lewis and Townsend Haines. "These able lawyers of the West Chester Bar," said the committee, "had specified cases that clearly proved the incompetency of the nominee, cases in which a mere schoolboy would not commit such blunders."

The last expression sounds like one of Lewis's, as it doubtless was.

When all had been heard, a tie vote in the Senate secured Judge Nill's rejection.

## THE COURTS IN 1846

"Lancaster City and West Chester are the Scylla and Charibdis; the whirlpools which swallow up our taxes and impoverish our farms and workshops."

"Wm. PENN," *in letter to Am. Rep. and Ches. Co. Dem.*

IN the early part of 1847, an interesting discussion occurred in the newspapers relative to the creation of the proposed county of Penn.

It is not my purpose to stir up the embers which even now give evidence of heat, but to rake out a few facts from the sundry communications that may not prove wholly uninteresting in connection with the administration of justice at that time.

"Having recently taken some interest in the prospect of erection and organization of Penn County," writes "Wm. Penn," "I have been surprised and, I may add, amazed that your claim seems so long to have been unheeded. Situated at no very inconvenient distance from the seat of justice, having but little business to transact thereat, and paying no

very exorbitant taxes, in common with many others, I either did not examine your grievances or perhaps doubted their existence, but recent inquiry has established the truthfulness of the one and removed all doubts as to the other . . .

“As the County of Chester contains twice the number of the inhabitants of Penn, there must of necessity be twice the number of suits in court, requiring twice the number of days, of parties, of witnesses and for trial. This circumstance explains why it is that *our regular terms and sessions are advertised each to contain four weeks.* In truth, *our court trials are so numerous, the terms in consequence so protracted, and we so distant that it is often vastly better to lose a just claim than obtain it at so great expense, delay and trouble.* That ‘the gainer loses by going to court’ has become a truism stereotyped on the minds of the people. Nor is it a matter of wonder when we consider the delay in obtaining justice even on such terms as best we can.

“As it is impossible to know what cases will be settled or dismissed or postponed or tried, it is requisite that the parties, witnesses, etc., should be summoned to attend early

each term, and thus an immense multitude of the sixty and two thousand inhabitants of Chester are drawn together to obtain—it may be—the ends of justice; but most certainly it is to secure a great detriment to the community in general.

“Nor is it of extraordinary occurrence that *a single trial occupies the attention of the court during an entire week*. In this case all of the uninterested enjoy the peculiar privilege of being dismissed that they may, as Monsieur Touson, come again . . . .

“These circumstances take place too often.”

In answer to these allegations, “Sadsbury” observes:

“What ‘Wm. Penn’ says about the delay of justice is not true. (One feels like asking, where was Sadsbury in the Nill and Forster hearings?) The truth is, justice is not delayed in Chester County to anything like the extent it was twenty-five years ago; nor are the expenses of obtaining justice so great as they were twenty-five years ago. This is abundantly evident to every person who has had any knowledge of the courts of Chester County during the last thirty years.

“This being the fact, capable of the

most conclusive proof, it follows that 'Wm. Penn' is wide of the mark when he talks of the great inconvenience, etc., to parties and witnesses . . .

"As to the inconvenience arising from our liability to be called to West Chester as jurors, this also is less now than in former years, and will continue to become less as the population of the county increases.

"And there is one important fact which 'Wm. Penn' does not mention in connection with the 15,000 inhabitants, which is, that when any of them necessarily visit the present county seat as jurors or witnesses they make and save more than those who live only ten or twelve miles distant by means of their greater mileage. Why, then, should such division be made? The correct answer is: Some other town in the county wishes to be a capital; some persons in the county wish to be judges, commissioners, assessors, and so forth; the same or some other persons wish to sell lots for the new county buildings, and obtain contracts for building them."

Sadsbury's answer brought a reply from "A Citizen," who invited him to go to Harrisburg and look over the petitions containing the

names of "a majority of all the taxpayers in Chester included in the limits of Penn.

"We have seen in comparatively few years," he continues, "the Turk's Head transformed into a large, flourishing, wealthy county town; the home of a single family become the abode of three thousand active, intelligent, and enterprising citizens, and we rejoiced the while that it was so. But we could not, if we would, avoid inquiring into the causes of this great change.

"We said that West Chester possessed no extraordinary and intrinsic qualities to make her what she has become.

"There were no mines, no manufactories, no commerce, no travel, to call together and employ (profitably employ) so many men of various habits. *As regards all these, there were no reasons why she should outgrow her neighbor, Marshalton.* (Angels and ministers of grace defend us!)

"Seeing this, we have come to the conclusion that it is because West Chester is the seat of justice of a large and prosperous county and has been reared and sustained by the taxes collected from the extremes and expended them . . . .

"Sadsbury commits another error of ignorance in affirming that those of us who occasionally visit the county seat make and save more money than those who are only ten or twelve miles distant by reason of our greater mileage pay.

"The writer of this article once had the misfortune to be subpoenaed as a witness to West Chester and was compelled to remain there six days.

"The mileage pay was \$1.50 and the daily \$3.75, or \$5.25 in all. Having to remain six days at a hotel at \$1.25 per day for himself and horse, the bill (not an exorbitant one) amounted to \$7.50. So that I had the good fortune 'to make and save a loss of \$2.25,' to say nothing of compensation for loss of time and neglect of business at home. This is surely a poorer compensation than the 'sheep's head and pluck' of the partisan politician.

"When Sadsbury asserts that 'justice is not delayed in Chester County to anything like the extent it was twenty-five years ago' he proves himself lamentably ignorant of our history.

"Does he not know that formerly a single jury for the county discharged the whole

duties requiring jurors at our courts (criminal and civil), and that frequently in less than two weeks at a time? Does he not know that lately two sets of jurors (and frequently three) are summoned to each term?

Does he not know that the Legislature recently altered the time for convening our court, because it was utterly impracticable to transact the business before the President Judge was required to leave for Delaware County?

“Does he not know that even now the business is not gotten through with for want of time—even at the last term? Does he not know that *the Court of Chester County was in session more than seven working months in 1846?*”



White Hall Tavern.

## THE BAR IN JUDGE CHAPMAN'S DAY

"One long last look behind me, gradually  
The figures faded on the shore of time."

BICKERSTETH, *Yesterday, Today and Forever.*

FORSTER had departed, Nill had followed him, Chapman had come. In appointing his son-in-law to the Bench, Governor Shunk merited no criticism; he had but yielded to the unanimous request of the members of the Bar in the Fifteenth Judicial District. Congratulations abounded, the strife that had existed for over a year was over, and the new court-house opened its doors to receive the new judge.

To many of the attorneys at West Chester, Henry Chapman was personally known. He had been an active practitioner of the Bucks County Bar for a quarter of a century, and was pictured by his friends as even-tempered, clear-headed, dignified, and modest. In addition to these qualities, his learning was extensive, his conversational powers good, and his integrity unquestioned.

At the time of Chapman's appointment the Bar contained such men as Townsend Haines, Joseph Hemphill, John Hickman, Joseph J. Lewis, William Darlington, John H. Brinton, Uriah Pennypacker, Francis James, Jesse Conard, P. Frazer Smith, William Williamson, George W. Pearce, Joseph P. Wilson, Washington Townsend, J. Smith Futhey and William Butler.

If a frequenter of the courts at West Chester had been asked to name the ablest trial lawyer of that time, he would probably have said, "Haines." Nor would he have erred, for Haines had most of the qualities required for successful practice before juries—sufficient learning, common sense, keen wit, juridical eloquence, and large experience.

Of all the lawyers mentioned, but two could electrify a jury—but one could touch their hearts. That one was Haines. Darlington had a readier knowledge of commercial law, Lewis was unquestionably a better black-letter lawyer, Hickman a nicer analyst; but, in the presentation of their cases, there was a dryness about Darlington, a bluster ever with Lewis, a sarcastic tone in Hickman's speech, that made them respectively less acceptable than Haines.



JUDGE HENRY CHAPMAN



To secure Haines, meant in many a case to secure the verdict. He had the affection and respect of the Bar and the community. His private character was pure, his disposition amiable, and his social qualities made him a delightful companion.

But he was indolent! Yes, he was, and cared little for money. A story is told of him as taking place at Zebe Townsend's store, where he spent many of his evenings.

"Zebe," said Haines, crossing his legs and clasping his knees with his hands, "I am offered a big fee to go to Media and try a case."

"When do you go?" inquired Zebe, with interest.

"Zebe," replied Haines, uncrossing his legs, "I'm not going."

The Bar of Chester County was at its best in Judge Chapman's day. Darlington was there, in the full vigor of his manhood. He had served his county acceptably in the Constitutional Convention of '37 and as Deputy Attorney-General, and was now devoting himself largely, indeed almost entirely, to civil practice.

Lewis, his chief antagonist, was a few years older. Rugged in appearance, gruff in manner, intensely egotistical, his ability was recognized

by all, and at the age of forty-eight he enjoyed the largest practice at the Bar.

James, tall and spare, was just fifty, but looked older; his experience in Congress had aged him.

Smith—grave, dignified, studious, and methodical, destined to become, in appearance at least, the noblest Roman of them all—was about forty.

Futhey—a few years younger, quiet and gentlemanly in manner—was enlarging his acquaintanceship and beginning his studies in local history.

Townsend, at thirty-five, was getting ready to relinquish the active duties of his profession for the cashiership of the National Bank of Chester County.

Hickman, three years older, stood in the front rank of his profession. As Deputy Attorney-General—if we may believe the statements of one of his legal brethren—Hickman had tried more cases of magnitude and responsibility than any of his predecessors. Single-handed and alone he had coped with the ablest and most experienced members of the Bar and had vigorously sustained the rights and interests of the Commonwealth.

Besides his triumphs as District Attorney, he had passed through a variety of political experiences. He had acquired a reputation as a campaign speaker and had been defeated for Congress.

Some of the practitioners of Chapman's day may be passed by, but Pennypacker must be looked at now; in a few years he will be seen no more. Pennypacker never appeared quite so tall or quite so important as in '48. To the honors achieved by him at the Bar he had added the Chief Burgesship of his town. This in itself was something, but to defeat William Darlington, who was an aspirant, was everything. "The 'Hunker clique' was struck a hard blow by the people and must open its doors to admit new men," said a prominent editor of that time. "Ungainliness of figure," he added, "is not incompatible with profound knowledge and rare judgment; but there are some who fear that in this case blustering self-confidence has been mistaken by the public for wisdom."

Brinton was about the same age as Hickman—a unique figure, big-headed, big-bodied, full of blood, iron, and Democracy; of late, much employed as Chairman of the Democratic

Committee of Chester County; has spoken in many places and is greatly concerned lest the people may not be alive to the issues of '48, may not fully recognize the virtues of Cass and Butler. You will look in vain for a more vigorous political antagonist than this ponderous Brinton—essentially a fighter—asking no quarter and giving none.

With hands thrust deep into his pantaloon pockets or raised high above his head, he thunders out on every occasion the one supreme article of his political creed, "I am a Democrat." It is his most effective declaration—in Democratic audiences always evoking cheers. Possibly he used it so often because he entertained the thought afterwards so happily expressed by Disraeli: "Few ideas are correct ones, and what are correct no man can ascertain; but with *words* we govern men."

The first person to present himself for admission to Judge Chapman's court was Robert Emmet Monaghan. For several months Mr. Monaghan had been alternately studying Blackstone and the needs of legislative and deliberative bodies. As a partial result of his lucubrations he had devised a contrivance for an instantaneous taking of the yeas and nays.

So useful did this invention appear to him that after securing his rights by a patent he hastened to Harrisburg for an order.

Monaghan's contrivance needed little explanation. To appreciate it, it was not necessary to see it; it was sufficient to read the directions for its installation and operation.

Place a small register at the table of the Clerk or Secretary—extend wires to the desks of the various members and attach two keys to each desk. Does a member desire to vote "yea?" Let him touch the "yea" key and instantly a lancet-like instrument cuts the sheet of "yeas" in the register. A similar striking of the "nay" key pierces the "nay" sheet and behold! the result is accomplished.

The Representatives, touched more by the ingenuousness than the ingeniousness of the young inventor, generously permitted him to introduce his invention into their hall at his own expense, and, having seen it, suffered him to remove it without charge.

## A NOVEL BY JESSE CONARD

"Hackneyed in business, wearied at that oar,  
Which thousands, once fast chain'd to, quit no more,  
But which when life at ebb runs weak and low,  
The statesman, lawyer, merchant, man of trade,  
All wish or seem to wish they could forego;  
Pants for the refuge of some rural shade."

COWPER, *Retirement*.

"**G**OD made the country and man made the town," so sang Cowper, and the novel of Jesse Conard echoes the refrain.

The author of *Stephen Moreland* reveals his profession on the first page of his book; for we no sooner open it than we encounter a *presumption of fact*.

"In order to ascertain the longitude," says he, "or fix the boundary lines of any given place or premises, it seems necessary that some place or premises should be considered as known."

"We commence this history, therefore, by supposing that everyone knows the locality of the Atlantic Ocean."

This moderate draft upon our geographical knowledge most of us can honor; but had he

required of his readers a knowledge of the locality of the largest body of fresh water in Chester County, doubtless he would have demanded too much.

Leaving these questions, however, let us take a look at old Stephen Moreland's mansion—I beg the author's pardon—I should have said *tower*, for even Stephen Moreland, early settler that he was, had brought over from Europe some of the esthetic notions which afterwards found their fullest development in Mr. Ruskin, and on an elevation not far from his house had erected “a sort of wooden tower from which every field and enclosure upon the premises could be seen.”

The descriptive passages of Mr. Conard show a most commendable brevity. Of an estate he says, “Besides the main divisions there were also laid off some smaller apartments for orchards, gardens, parterres, &c.” I myself had often used &c. in drawing bills of indictment, but I never really appreciated the labor-saving qualities of this sign until I read this work.

The sentence I quote is like a modern drawing, and wholly unlike a modern novel. In the former, much is suggested and little drawn

out; while in the latter, much is drawn out and little suggested.

There is another reason why the writer of *Stephen Moreland* is entitled to honorable mention in the lists of novelists—he manages by some means to complete his first volume (I never saw his second) *without a duel or a damn.*

Unfortunately, in our day this is a lost art. His nearest approach to the present *sine qua non* is where a friend of Stephen's grandson requests the sheriff "to gather up his habeas corpus and go to the devil," but in this request I am sure the reader will find the speaker almost excusable, if he does not wholly exonerate him.

Stephen the First, or the perquisitor, has "the remarkable tact of turning his knowledge to account." In this respect he differs greatly from his son George, who exhibits "nothing particularly beyond mediocrity in point of intellect," but has a good education and possesses besides a degree of romance and sentiment which enables him to enjoy the beauties of country life and "to preserve the old hedges and *relicts* of former days."

Just what Mr. Conard intended to include

in this legal term, is not clear, but such knowledge is not necessary to an appreciation of the story.

George entertains an unalterable negative opinion as to the propriety of second marriages. This is unfortunate, for the author pictures him as "worthy the ambition of a sprightly widow."

Stephen the Second, the hero of the novel, is seen at his best in a riding costume jumping fences and ditches, after having gallantly conveyed a maiden from school on the back of his horse; then follows a fox chase, not so interesting as Taylor's, not so exciting as Everhart's, but sufficiently close to furnish Stephen with a portion of the brush, for, of course, "Mr. Moreland was foremost when the fox was taken."

The chapter in which these scenes occur has plenty of "movement," and we feel upon concluding it, were Stephen's name not Moreland, it should be Lochinvar. So passes his youth. Perhaps the pleasantest occasion mentioned in the book is a Christmas dinner given by Stephen's father. Naturally one lingers over the description of the luxuries of life with which the Moreland table is adorned. Besides

the choicest wines there are “turkeys, geese, ducks and pea fowl.” Ordinarily such a table would be sufficient, but I confess I could not help wondering when I saw them brought in, whether these pea fowls were the old fellows mentioned in the first chapter, “whose pedigree could be traced to the first settlement of the country.”

While others debate this question, let us look at Stephen, who has just returned from college.

He is now about twenty-one, stands five feet eleven inches in height, is perhaps rather stout but his person is remarkably well proportioned; while his front face is full, his features are regular without insipidity, and show signs of a benevolent heart and noble disposition. Moreover he has an interesting shade of melancholy. Possibly during his college life he has read *The Sorrows of Young Werther*, or more probably, since his return, he has felt the yearnings of Hermann.—Lest anything may be wanting to the completion of the picture, add a blue eye, a liberal spirit, and “a set of high-toned principles, *the exercise of which never costs him an effort.*”

Harriet Penrose, the heroine upon whom Stephen bestows his affections, is an interest-

ing girl whose beauty can only be expressed by metaphors—Mark Jones is selected for this difficult task.

“Such lips! They are like all the cherries, and her cheeks, each one, is like a ripe peach floating in a bowl of milk. Her eyes! If you want to keep your own sight, do not look at her eyes. The beams of the sun are cakes and ginger-bread compared to them. And then, her neck—Oh heavens!”—here he stops and very properly advises his friend Stephen not to see this young lady, unless he is prepared “to pounce upon her at once or to go quietly and hang himself.”

Caroline Peyton, another prominent figure, is still more beautiful; the metaphors are exhausted, however—the usual terms will not suffice—she remains undescribed.

The villain is introduced on the occasion of the marriage of Mr. Dickinson, a worthy schoolmaster of the neighborhood. Did I say villain? I meant Sheriff, a stout black-whiskered man, who startles the guests with “three heavy raps at the outside door,” and then steps into the entry with an attachment for the schoolmaster, who, just having been married, naturally declines to go.

"I certainly shall not go tonight," replied Dickinson.

"You must go with me," said the Sheriff, "or permit me to lodge in the same room with you?"

"That will not be convenient."

"I must execute the attachment then. We must either start now or I must keep an eye upon you during all the night."

Some of the guests laugh, others are indignant, all are confused. It is here that Mark Jones uses the language, before referred to, about the proper place for a *habeas corpus*. It is here, too, that the legal genius of Mr. Conard shines resplendent.

*Collectasque fugat nubes solemque reducit.* Neptune used a trident to push the ships off the rocks. Conard uses a fiction more portable and equally efficacious. "Man and wife," says he, "are but one person in law. Now as Mrs. Dickinson is not present, but is known to be somewhere else at this time, so in law as well as in manners we must suppose Mr. Dickinson somewhere else. You see, therefore, you have not found your man."

Truly, as Holmes says, "Life would be nothing without paper credit and other fictions."

Let us leave this company (for the Sheriff has gone) and refresh ourselves by partaking of a "collation under the shade of a beautiful grove at the head of a delightful fountain," or perhaps, to those tired of modern dances, it will be more interesting to "repair to a large barn," where a band is in readiness prepared to furnish music for "Hunt the Squirrel."

The conversation is as edifying as the music is inspiring. No small talk is permitted. Harriet quotes from Burke on "The Sublime." Stephen replies from "Alison on Taste."

When the music ceases, I close the book, and find myself engaged in an animated conversation with a certain Miss Donaldson. I regard the scene as rural and novel. She thinks it vulgar and shocking, and declares "after enjoying the fashion and style of the city," she has no taste, whatever, for "such rusticity."

## THROUGH EUROPE WITH EVERHART

"My native land, good night!"

BYRON.

**I**N 1848, when three years of active practice had succeeded three years of preparative study, James Bowen Everhart determined to make a three years' tour of the European continent, with incidental excursions into Asia and Africa.

As soon as this graduate of Princeton lands in London, he enters quite naturally the wine vaults of that great metropolis; where, "beneath the floating drapery of cobwebs and fluttering wings of bats," he sits down to muse upon the virtues and vices of wine. Surrounded by hogsheads and demijohns, "the graphic image of Solomon" rises before him and "the repentant speech of Cassius" sounds its warning in his ears. He formulates an indictment against it: "How it induced the shame of Noah and the crime of Lot! How it blasted the life of Poe! Made Swift a lunatic! Savage a monster! Porson a brute."



JAMES B. EVERHART



We find him next at Ascot, watching the races—watching also “a small woman with sharp features and half-closed lips,” who but for his statement we should never have recognized as “the Queen.”

Crossing the English Channel he discovers in Paris an interesting study in the President of the French Republic. “Louis Napoleon,” according to his sketch, “is a man below the ordinary height; his nose prominent; his eyelashes long; his glance steady but downward, like the first Napoleon; his moustache heavy and dark, shading his mouth. His face is impassive, calm, passionless, thoughtful, and inscrutable; neither repelling by pride nor attracting by sympathy, betokening a genius not to be seduced or daunted, but leaving it in doubt whether his instincts are good or evil.”

Referring this question to the future, Everhart hastens to Italy and visits the Pope by special appointment. The Chamberlain presents him and leaves him alone with Pius IX. The face that looks down on this Chester County lawyer is “beautiful and full of intelligence, almost womanly in its expression of mildness,” a face “neither furrowed by time nor saddened by misfortune.”

From Resina, Everhart starts on horseback for the top of Vesuvius, which is giving signs of an imminent eruption. Dismounting, he climbs "up the long, slippery steps, over pumice rock ankle deep in ashes, leaning on sticks, clutching at loose cinders, stepping over patches of snow, amidst the importunities of beggars, guides, and hucksters." In vain! He makes a second effort—toils, perspires, and stops—a little rest, and "red of face, panting, and exhausted," he stands on the rim of the old crater, sees it blaze, hears it roar, and feels the crust quivering beneath his feet.

Naples enchant<sup>s</sup> him. Naples with its circling hills, clear heavens, boundless sea, and burning mountain. Somewhere in this land, still smouldering with hidden fires, were "the haunts of the Sibyls and Cimmerians, of Circe and the Sirens. Here also were the Elysian fields and Tartarus, the Stygian lake, and the 'infernal' rivers."

In Athens, too, he finds a peculiar charm: the halo of ancient days sheds a beauty on her ruins; the shades of the past still linger near.

A few weeks later he stands in Constantinople, "at the confluence of two seas, by the

contiguous shores of continents, with its panorama of spires and masts, of trees and cupolas, and the Golden Horn."

He has seen Victoria and Napoleon; he will see Abdul Medjed, too. His wish is gratified; but in his brown and pensive face he can read "no trace of great emotions, no ambitious dreams, no consciousness of power, no fear of responsibility. It seems inspired with the fatality of his religion, with the gravity of his race, with the mildness of his life."

Approaching the Nile, Everhart can hardly contain himself. "The joy of the Arab!" he exclaims; "the mother of Egypt! a thousand miles without a tributary stream!

After resting in the shadows of the pyramids, he journeys to Palestine, hastens to Jerusalem, and walks along its streets. "Streets, where trade bargains; faith prays; justice flogs; medicine prescribes; poverty begs; aristocracy sips coffee and smokes; where the barber cleans pipes and shaves heads."

Yet, "She was once favored. The Deity loved her better than all the dwellings of Jacob. She was esteemed the type of the first Paradise on earth and the last in Heaven, carrying the mind back to the Eden of Adam

and forward to the New Jerusalem of the Apocalypse."

Jerusalem is left for the Dead Sea. With a Sheik and four men as guides and guards he makes the trip in six hours and finds a strange loneliness prevailing: "A few bushes were seen but no birds were there, and a single gazelle was the only creature that crossed our path. The mountains of Moab cast doleful shadows upon the mysterious lake. Its heavy waters rolling slowly upon the beach, rattled like sheets of metal or like muffled bells the requiem of the burned cities. I bathed in its waters, transparent as glass, which buoyed the body up and burned the lips like vitriol."

Returning to France, he turns his face towards Spain; arrives in Madrid in time for a bull-fight. "Everybody is out; pedestrians, in various costumes, mingling silk and rags, breathing garlic and cologne." The sight he sees in the ring makes him sick at heart and he tries to forget it in a visit to the Escurial. Here, "the loneliness is oppressive, the monks have passed away and Royalty returns no more. The long cloisters hardly yield a sound except the foot-fall of the stranger. The shady, pebbled walks are overgrown, and fragrant

plants waste their sweetness like the desert flowers. Behind are barren mountains; before are barren plains, and all around are signs of decay. Capacious houses are near; many were never finished, some are in ruins, most are deserted. Weeds cling around the walls, bats and lizards peer from the crevices, storks beat their wings upon the chimneys, lean black pigs root along the alley, goats browse in the grassy streets and shepherds keep watch from the empty doorways."

From Spain, Everhart shifts to Germany; then to Holland. There, I leave him, "in the land that rides at anchor, where the people are amphibious, where the women are descended from mermaids, and the men once wore fins."

## A WORTHY LIST

"Now turn we to our former chroniclers."

KEATS, *Endymion*.

FROM the establishment of the Colonial Government in 1683 to the year 1793, criminal cases—excepting those of a trivial character—were generally prosecuted on the part of the Government, by the Attorney-General in person.

At the May sessions of 1793, however, a Deputy Attorney-General—one Robert Frazer—made his appearance in the criminal courts of Chester County to represent the interests of the Commonwealth.

Frazer was appointed by Jared Ingersoll and continued in office until February, 1800, when John Sergeant, an appointee of Joseph McKean, took his place.

For the August sessions of 1803, Thomas Sergeant was named, who in turn was succeeded by Joseph Hemphill.

Hemphill assumed office in November, 1803, and remained till November, 1808.

During his term "Black Hannah" was tried for murder. The trial came off at the May sessions of 1805 and resulted in her conviction.

In February, 1809, John Duer became Deputy Attorney-General and continued as such until April, 1816.

An examination of the indictments signed by Duer, shows one against Dennis Whelan, a grandson of the originator of the famous town of Welsh-Pool, in Uwchlan.

The prosecutor was Charles Kenney, Recorder of Deeds and Register of Wills of Chester County, who complained of an article that appeared in *The Chester and Delaware Federalist*, of which Dennis was the proprietor.

"Fee Bill vs. Charles Kenney" is the title of the article, which charges the recorder with taking illegal fees.

As a study in Addisonian English, I cannot commend it, but political critics of the present time—if they read it—will find that "official absenteeism" in Chester County is at least a hundred years old.

Dennis refers to Kenney's office as "*the office Kenney sometimes is in,*" and applies to its occupant such choice terms as "little exotic,"

"pigmean highness," and "quondam coffee-house footman and runner." He also asserts—that in the interest of honesty and good government "Charley" must be driven into "the shades of obscurity" or "to that place where there is weeping and wailing and gnashing of teeth."

Whether Kenney was driven to either place is not recorded, but the jury showed their sympathy with Dennis by ignoring the indictment and imposing the costs upon the prosecutor.

In January, 1817, Isaac Barnard succeeded Duer; in 1821 Isaac Darlington succeeded Barnard. Upon Darlington's appointment to the Bench, William H. Dillingham stepped into the office vacated by him and occupied it from July, 1821, to November, 1823.

Thomas S. Bell was the next appointee and discharged the duties of the position from January, 1824, to May, 1828.

Henry H. Van Amringe followed Bell and acted until August, 1829, when Philip S. Markley, Attorney-General, took upon himself the labor of prosecuting the pleas of the commonwealth here in person. In May, 1830, however, Van Amringe was again appointed and served until 1835.

At the November sessions of 1830, Van Amringe, on the part of the State, conducted the trial of Edward Williams, charged with the murder of his wife. William H. Dillingham and Townsend Haines appeared for the defendant, who was convicted and hanged.

At the August sessions of 1834, Charles Bowman was tried for the murder of Jonathan McEwen, a blind fiddler.   
VanAmringe

again represented the State, and Haines with Thomas S. Bell, the defendant. Bowman was convicted. Three months later, he was hanged.

Van Amringe has the unique distinction of being the only Deputy Attorney-General that ever appeared in the double role of prosecuting attorney and defendant.

It took place at the November sessions of 1830. Among the indictments of that term is one in the Deputy Attorney-General's own handwriting, headed, "Commonwealth *vs.* H. H. Van Amringe," charging him with an assault and battery upon William Darlington. Endorsed on its back are the names of certain attorneys, including Francis James and Uriah Penny-packer.

To play this double role effectively before a jury would have been a hard task even for a lawyer of Van Amringe's ability. On the trial of such a case a number of difficult questions would naturally present themselves: At which table should he sit and with whom should he consult? Should he ask the jury to believe the prosecutor or the defendant? As prosecuting attorney, how useless and undramatic to point "the accusing finger" at the defendant's vacant chair. In view of the novel questions and considerations that confronted him one is not surprised to find him cutting the Gordian knot by confessing the indictment.

The sentence of eight dollars and costs shows that the assault must have been of a very trivial character; indeed, a newspaper of that time declares that but for Van Amringe's insistence, the indictment would have been ignored.

At the May sessions of 1831, another member of the Bar—Robert B. Dobson—was indicted

Robert B. Dobson for "assault and battery,"

to which was added a count for "false imprisonment—the imprisonment being for "the space of one hour."

This case, in which Thomas Sweeny, Jr., was prosecutor, was removed to the Circuit Court, which was expected to sit in September. On July 23, 1832, Dobson followed the example of Van Amringe, two years before, and entered a plea of "Guilty."

Van Amringe was succeeded by Joseph J. Lewis, who officiated at the May, August and November sessions of 1835.

For the three following years the office was filled by William Darlington.

In 1839, Joseph Hemphill assumed its duties and discharged them until 1845, when John Hickman was appointed by Attorney-General John K. Kane.

At the July sessions of 1845, Jabez Boyd was tried before Judge Bell for the murder of Wesley Patton, a boy fourteen years of age. Hickman appeared for the prosecution; Lewis and Hemphill for the defense. Boyd was convicted and shortly afterwards was executed by Sheriff Wood in the new prison yard.

In July, 1846, Hickman was followed by Lewis, who gave way to him again in January of the following year.

Upon Hickman's resignation, John H. Brinton was appointed for the April sessions of 1847.

At the October sessions of 1848, Washington Townsend succeeded Brinton, and in April, 1849, J. Smith Futhey succeeded Townsend.

Futhey was the last Deputy Attorney-General who prosecuted criminal cases in Chester County.

## JUDGE HAINES

"To be or not to be, that is the question:—"

SHAKESPEARE, *Hamlet*.

THERE never was but one lawyer in West Chester who sat down and seriously debated with himself whether the leadership of the Chester County Bar was worth the effort required to attain it. Townsend Haines asked himself that question and answered it negatively after making the experiment.

Nature had endowed Haines with plentiful ability, while a genial disposition and kindly manner made him hosts of friends. His brilliant talents attracted clients—but some of them, upon discovering an apparent lack of industry on his part, lost little time in looking elsewhere for legal advice and assistance.

How much time was actually consumed by Haines in his effort to achieve distinguished success at the Bar is uncertain. Joseph J. Lewis said: "From my own observation, I could not be quite sure of its actual existence

and I knew of it only from himself; but it was persisted in long enough to satisfy him that a larger business was certainly within his power, and that all that was necessary on his part to obtain it was a willingness to devote to it the time and attention it would require. But he was destitute of that spontaneous energy that demands employment as a necessity and he preferred an easy, unanxious life, with no more care than was required by a moderate practice, to larger gains and higher professional position accompanied by continual toil. ‘I counted,’ said he, ‘the cost of the career that I saw open before me, and asked myself whether it would afford compensation for the sacrifices it would involve, and the answer was, it would not.’

“Hence,” said Lewis, “he relapsed into his old easy way, sure that his talents and experience would command employment sufficient for his needs without the laborious diligence which higher aims would exact and allow him a comfortable exemption from the corroding cares that feed on the vital forces of the intellectual and physical man when engaged in an ambitious struggle for professional eminence.”

Despite the fact that Haines declined to assume the labors and responsibilities of a leader at the bar, Lewis declared he was "a powerful coadjutor."

"No cause could be well manned for a severe and protracted contest," said he, "without his services being brought into requisition, and he was therefore almost uniformly engaged in all heavy trials where two or more counsel were employed on a side.

"In cases of disputed boundaries of lands, of conflicting claims to water-rights, and in that large class of actions in which damages for injuries to person, property, or reputation were demanded, he was in special request, as well as in those falling within the jurisdiction of the criminal courts, where the offenses charged were of great magnitude or involved the character and standing of persons previously of good repute.

"As a jury lawyer he was very successful. He had much skill in cross-examination and seldom failed in an attempt to extort the truth from an unwilling witness. This he did, not by browbeating—for to that unmanly practice he never resorted—but by a kind and candid manner which appealed to the

better feelings . . . and by a judicious train of questions which made the answer desired the natural sequence to prior admissions.

"But it was principally in addressing juries that his power was displayed. He had a handsome person; a dignified and imposing presence; a voice at once strong and musical; a grave, deliberate, and forceful manner; a lively imagination which gave him the command of appropriate images, and a comprehensive grasp that enabled him to deal with facts in the style of a master. In technical knowledge he was deficient: He usually trusted his colleague for the law of the case, and rarely attempted to argue on the admissibility of evidence. As an advocate, he was strong, luminous, brilliant, and sometimes even grand. As a mere lawyer, he was unready, subject to surprises, and never forcible in argument except after laborious preparation, to which he was averse . . . .

"For cases of abstruse law he had no taste, and he never followed any judgment or decree on error or appeal into the Supreme Court, nor did he ever make an argument in that court, though often solicited."

In 1848, Governor Johnston appointed Haines Secretary of the Commonwealth, where, according to Lewis, he gained many friends by his social disposition, his attractive conversation, and agreeable manners. "If he sometimes gave cause for complaint by an inveterate habit of procrastination, he silenced all murmurs by his easy and graceful courtesy."

In 1850, President Taylor appointed him Treasurer of the United States. "This position," said Lewis with a sly thrust, "he certainly enjoyed; his responsibilities were not onerous and he had abundance of leisure on his hands. If there could have been an assurance of its permanency, his highest aspirations would have been satisfied."

He held the treasurership for about a year and a half and then resigned it to accept the president-judgeship of the Fifteenth Judicial District—a position which for ten years he filled acceptably to the bar of both counties.

One of the cases tried before Judge Haines had a singular ending.

A prisoner was indicted for stealing some chattels from a house in Marshalton—a small village near West Chester, which has neither increased nor diminished since the world began.

The case was a clear one and the prosecutor was about retiring from the stand, when he suddenly volunteered the information: "If the thief had looked in my top bureau drawer in the front bed-room he would have found a pocket-book with fifteen hundred dollars."

This declaration visibly affected the prisoner with sadness, while a man in the audience hastily walked out, remarking as he did so: "This air is stifling." A moment later the jury retired without hearing argument and very promptly convicted the thief.

After receiving the congratulations of his friends, the prosecutor drove home and discovered that a wiser thief had profited by his gratuitous advice—the bureau drawer was open—the pocket-book was missing—the money was gone.

Of Haines's court at Media, Ashmead furnishes two incidents.

On one occasion, the judge, desiring to consult *Purdon's Digest*, asked Reuben Sitzenberg—a newly-appointed tipstaff—to bring *Purdon* to him. The name was new to Sitzenberg, but off he started to hunt the man whom he supposed he was directed straightway to carry before the court. He searched through



JUDGE TOWNSEND HAINES



the building without success, and at length returning went to the judge at side-bar and stated in a low voice: "Judge, I guess the man's gone; I can't find him anywhere." "Man! man!" wrathfully exclaimed the judge. "You're a stupid ass. I don't want any man; I sent you for a book!"

On another occasion, as the judge was entering the court-house, a hardened offender who at almost every quarter session was present, charged with selling liquor without license, and who had recently undergone a sentence for that misdemeanor, accosted him and said: "Well judge, I'm out now." "Yes, yes, I see," was the reply, "but it's no fault of mine. I gave you all I had in my pocket that I could give you."

During the administration of Judge Haines, newspapers expressed their views of the bench quite freely and not always complimentarily. After publishing his opinion on an application for a continuance of the case of *Commonwealth vs. Philips*, the editor of the *American Republican and Chester County Democrat* said of him: "We may disclaim all 'malevolence' towards him. We entertain nothing of the kind, but rather have respect for the native

powers of his mind. At times he is excessively courteous; on other occasions unnecessarily irritable. This is the natural temperament of the man . . .

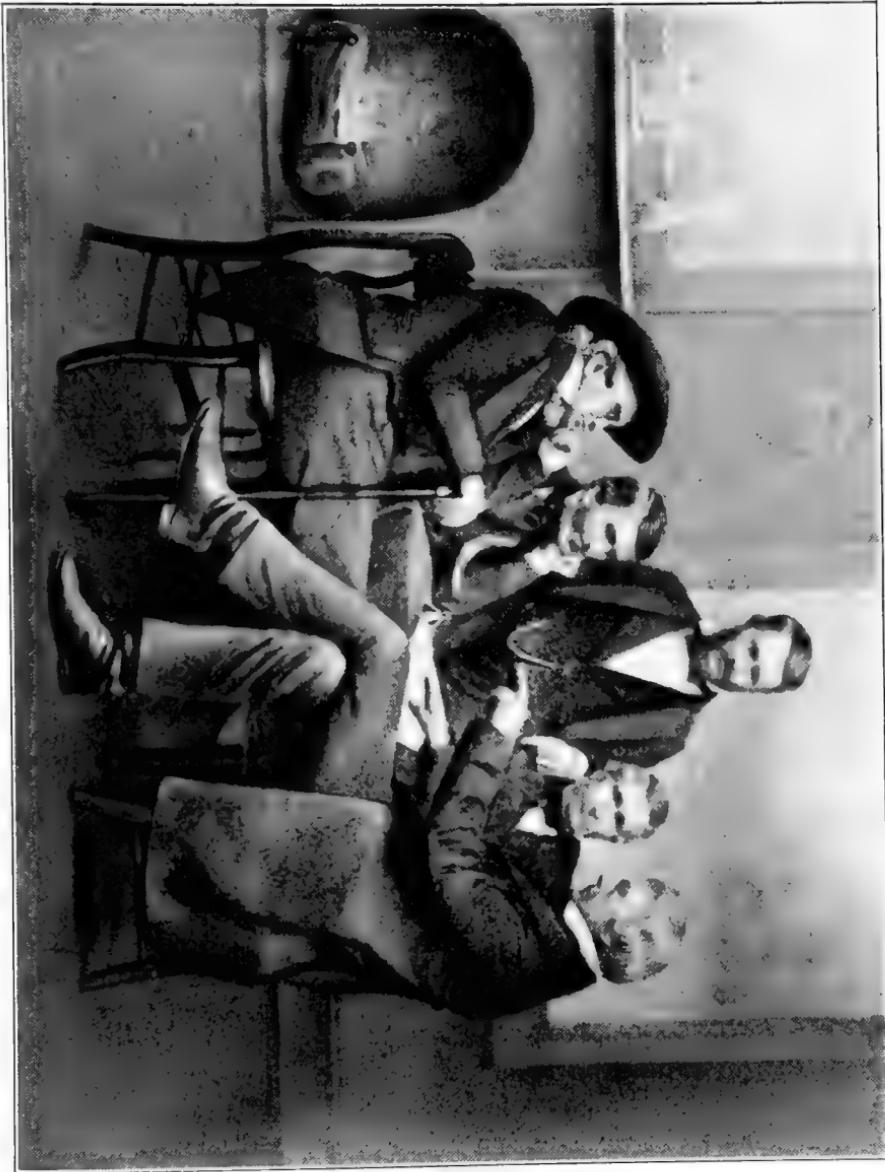
"The great trouble in this and many other cases that come before Judge Haines is simply this: He decides and then throws into the scale of justice a little spice to appease or contribute to the popular clamor.

"It is a standing objection to Judge Haines that he listens to too many facts in regard to cases at the street corner and under the cool shadows of trees while enjoying the society of his companions . . .

"When Judge Nill was on the bench, if we are not mistaken, it was brought to bear against him that he *would* talk to parties in the streets about the cases before him. We believe this was one of the charges preferred against him (whether well founded or not, we cannot say) before a committee of the Senate at Harrisburg."

This was "the most unkindest cut of all," for Haines was strongly opposed to the confirmation of Nill.

"Excessively courteous, unnecessarily irritable."



JOS. P. WILSON

NIMROD STRICKLAND  
גְּדוֹלָה וְתִבְרָגָה



Did Mr. Pennypacker presume on this courtesy when he came into court one day, and, in a low tone of voice, requested Mr. Darlington to suspend his argument for a moment that he might present a constable's bond for the court's approval? I think he did.

Mr. Darlington acceded to his request and Mr. Pennypacker laid his bond on the Judge's desk.

"A constable's bond," said he. "If your Honor will approve it, the person is here and can be sworn in."

Judge Haines made no reply beyond directing Mr. Darlington to go on with his argument.

Mr. Pennypacker repeated his statement and added, "it will take but a moment."

"We cannot attend to it now," replied Judge Haines; "it shall be attended to presently; Mr. Darlington, go on with your argument."

Mr. Pennypacker then (according to the report) "reached up"—I should say, "reached down," for he was a man six feet seven inches in height—when Judge Haines, with a brush of his hand towards the bond, said:

"Leave it alone and I will attend to it after awhile."

"Well, there's no use in getting peevish about it," exclaimed Mr. Pennypacker.

"Sit down," thundered Judge Haines.

Mr. Pennypacker did not comply instantly, whereupon the Judge directed the clerk of courts to enter a rule to show cause why he should not be punished for contempt.

The next morning, when Mr. Pennypacker appeared in court, Judge Haines inquired:

"What have you to say?"

Mr. Pennypacker's oral answer to this inquiry was unsatisfactory and prompted the court to ask:

"Is that all you have to say?"

Seeing that the court was about to impose sentence, Mr. Pennypacker asked leave to reduce his answer to writing. It read as follows:

"I, the subscriber, beg leave very respectfully to state to the court that the words uttered by me yesterday, which caused the rule to be entered to answer for a contempt, were uttered hastily and with no intention to treat the court with disrespect. That I was laboring at the time under a nervous irritability occasioned by ill health and certainly would not have expressed myself as I did if I had had the usual command of myself as in a state of sound health."

Upon reading this statement, Judge Haines

remarked that he had constantly endeavored to treat the members of the Bar with respect; that he had refrained from noticing impertinence that long ago his colleagues thought he ought to have noticed, and that he did not consider that the offender in this case had made any apology.

"The dignity of the Bench," said he, "must be protected. In consequence of your ill health we will not imprison you, and because of your having a large number of cases on the list we are unwilling to interfere with the business of the court by striking your name from the roll of attorneys. We have, therefore, no other remedy than to impose a fine."

A fine of fifty dollars and costs was accordingly imposed, which the Bar, a few hours thereafter, petitioned the Court to remit.

## JOHN HICKMAN

"Could you come here and see the vegetables that I raise in my garden with my own hands you would no more talk to me of empire."

DIOCLETIAN.

I SAW him for the last time on the porch of the Turk's Head Hotel engaged in a discussion with Jesse C. Dickey. Quite a crowd had gathered about the place, and with boyish eagerness I pressed forward to a point where I could hear both disputants. Hickman talked a little louder than usual—a little louder, it seemed to me, than was really necessary—and Socratically plied his adversary with question upon question. At last he called "check," and the game was over.

I watched him rise from his arm chair and walk slowly down the street towards his home. Illness had weakened him, he had the stoop that comes with age, but he still flourished his cane rather than used it.

Memory presents to me a keen-visaged man, with a sharp, penetrating eye, and a beard that partially hid the sarcastic smile that often, perhaps too often, played upon his face.



JOHN HICKMAN



Measured by the tape line, he was about five feet ten inches in height, and probably weighed at the time I last saw him a hundred and forty pounds.

Measured by intellectual standards, he was the finest analyst at the Bar, and with the exception of Judge Haines, the ablest man of his time in Chester County.

As a cross-examiner, Hickman was courteous—excessively courteous—never used a bludgeon; but upon discovering a weak point in a witness, thrust quickly and deeply.

As a speaker he wasted no energy. He dissected his opponent's argument with surgical skill and disposed of a half hour's rhetorical talk with a blast of sarcasm.

Washington Townsend, who knew him well, remarked at his death, "Through his able and stirring pleadings, verdicts were gained which possibly were not in harmony with their merits."

When I began the reading of law and would now and then comment favorably upon some advocate's presentation of a cause, it was not unusual for an habitual frequenter of the court to observe: "Yes, yes! but you should have heard Hickman in his prime!"

Those who knew Hickman best, spoke of his

fine literary taste. He was one of the few lawyers of his day to whom Rousseau and Voltaire were more than names. Of Voltaire in particular he was an indefatigable reader, and had imbibed somewhat of his spirit.

Two sayings of Hickman—two only that I can recall—have survived his death: one relating to the court-house, the other to the Episcopal Church.

When asked for an appropriate motto for the court-house he suggested: "Justice is damned uncertain here."

When inquired of why he preferred the Episcopal Church he replied, "Because it interferes neither with a man's politics nor his religion."

With the mention of politics it may not be amiss to state that Hickman never was a petitioner for office. In 1854 he wrote the following letter, which I commend to the present generation.

WEST CHESTER, Sept. 30, 1854.

GEO. W. PIERCE, Esq.:

Dear Sir: The position I now occupy before the people of Chester County as a nominee of the Democratic party has not been of my choice. It was cast upon me unsolicited.

I am not, and trust I never shall be, a petitioner for office. I do not covet its honors, and it has no profits to yield. When I consented to submit to the wishes of my friends, I resolved to do no act which could be construed by any fair man into electioneering. As I have been placed in nomination by the voluntary action of my fellow-citizens, my election, if it comes at all, must come in the same way. I desire no person to yield his vote to me whose unbiased judgment does not approve the act. As I prize my own self-respect above official position, so I am resolved not to lose it by cringing subserviency or servile adulation. I value no vote purchased by flattery or wrested from the hesitating. If I should ever acknowledge a constituency, it must be a willing one.

As I have said, I cannot use means to forward my election or do any act looking that way. I must be relieved from the necessity of addressing public meetings at this time.

Yours truly,

JOHN HICKMAN.

His Congressional career is a part of the history of our country and needs neither elabo-

ration nor eulogy. In 1867 he was induced to allow his name to be used for the Legislature, and was elected.

At the ensuing session he offered an amendment to the State Constitution making suffrage free to all who could read, and supported the measure by a powerful speech, closing with an appeal to Almighty God to "record this great act of my life as a credit to offset my many shortcomings."

For many years Hickman was a patron of the theater and numbered among his friends some of the most prominent actors. One of these was Edwin Forrest.

When Forrest was presenting "Lear" at Philadelphia, Hickman went with a party to see the play. At its conclusion three members of the party congratulated Forrest upon his acting. Hickman alone was silent. At last Forrest inquired: "What did you think of me, Mr. Hickman?"

"I did not see you," said Hickman.

"Oh! You came in at the end of the play," remarked Forrest.

"On the contrary," answered Hickman, "I was present almost from the beginning, but I did not see you."

"But you must have seen me," remonstrated Forrest, in a rising voice. "This needs explanation."

"My dear Forrest," said Hickman, bowing most deferentially, "I repeat, I did not see you, I saw only Lear."

In his last years Hickman found no little enjoyment in horticulture. Distinguished visitors—and they were many—who paid their respects to him at his attractive home were usually invited to inspect the earliest and finest products of his garden, and those in humble life were entertained by him with equal kindness and attention.

Much of his time was given to meditation. The triumphs of the Bar and the Senate had been his, but, as Thackeray remarked of fame and riches, "What do these profit a year hence when other names sound louder than yours, when you lie hidden away under ground along with the idle titles engraven on your coffin?"

His law books had been laid aside. Rousseau and Voltaire followed them. Not many months before his death, his friend Addison May found him studying instead "the holy teachings of the Bible and the works of Shakespeare."

On March 23, 1875, he died. A few days later, at a meeting of the Bar of Chester County, William Darlington declared he merited eulogies of the highest order. He received them—one in particular from James B. Everhart who had known him intimately and had long enjoyed his friendship:

"I suppose," said he, "this Bar has never convened to deplore the death of a member more widely known than Mr. Hickman.

"He was an extraordinary if not in many respects a great man. Dwelling so near him and knowing him so intimately we are apt to overlook his claims to distinction. Life, like a landscape, should be regarded rather in its entirety than in detail, and it is therefore best appreciated at a distance. Faults are often necessities, but merit is always the result of effort. The salient points of his career must control our estimate of his character. His good works, like the garments of Dorcas, must be his eulogy.

"He was one who impressed his individuality upon his generation, modified the direction of contemporaneous history, formulated current sentiment into a policy, resolved some of the greatest problems of the insurrectionary crisis.

"It was he who stood forward if not foremost to assert the exhausted forbearance and belligerent defiance of the North; it was he who sounded the slogan through the land, calling like a clarion the free States to their guns.

"His self-reliance, his decisiveness, his indomitable will, his inspiring manner and intellectual alertness fitted him to be a leader. A man of insight and analysis, he looked with a clear eye into the relation of facts and the springs of action. Undeluded by plausibilities, undaunted by resistance, unwearyed by effort—skilful, vigilant, logical—he pursued his purpose to the ends. He made circumstances, personal, political or pecuniary, subsidiary to a single thought. Friendship could not persuade, nor anxiety confound, nor the contingency of favor or censure, nor public clamor, nor private interest swerve him.

"The ardor of his nature, once kindled, was not easily cooled. His conviction became a passion; his passion a principle; his principle a duty; his duty a conscience.

"Thus his public speech had all the fascination of sincerity and enthusiasm. His aggressive spirit, his pertinent knowledge, his direct-

ness of argumentation, his adequate imagery, his voice pealing like an organ, his face beaming like a prophet's, his imposing attitude and befitting gestures proved him an orator capable of swaying the Hustings or the Forum.

"And though he had not the scholarly grandeur of Sumner, nor the nervous logic of Stevens, nor the brilliant fluency of Winter Davis, he was unlike them only in degree, but kindred with them in the true quality of eloquence. But it is not such considerations which now move us most.

"These shining characteristics did the State some service, made his life historical, made him the dazzling center of the public gaze, flashed his name upon the wires through the press, on the lips of people, hailing him the hero of the hour, the genius of the new national departure.

"But it is for gentler qualities which we shall miss and mourn. The genial friendships, the social frankness, the bland greeting uttered *O quam familiariter*, the pleasant hours of conversational communings, the charming interchange of thought and humor, the transient wrangle, the idle jest, the cheerful laugh—in the long winter nights, in the sweet

summer day, beneath the roof, beneath the trees, along the streets, along the streams. And, therefore, we grieve for the loosened grasp of the generous hand—for the silence of the golden mouth—for the stillness of the sympathetic heart!"

## DIED ON THE FIELD OF HONOR

"Hear the tolling of the bells—iron bells!

What a world of solemn thought their monody compels!"

POE, *The Bells.*

"HENRY W. CARRUTHERS, of the 97th,  
mortally wounded at Strawberry Plains  
on August 16, 1864"—died six days later.

There was genuine sorrow throughout West Chester when this message was received, sorrow that found an honest expression in the faces of the members of the Bar who met in "Hemp-hill's office" on August 25 to mourn their loss.

He was "the fifth martyr from our midst," the fourth from the Bar—Bell, Roberts, McIntire had preceded him.

Every lawyer felt that one of the best and most promising of his circle had been taken. "The industry with which he pursued his preparative studies for the Bar"—so ran the resolution—"the energy with which he applied himself to the duties of his profession—his honorable bearing—the courteous, kind and gentle spirit that always graced his intercourse—his

loyalty, his patriotism, his courage, his humanity and finally his heroic death, make his brave and beautiful life precious to all his friends and brethren."

There were no mental reservations in the adoption of this resolution—it expressed the feelings of all.

Less than three years before, in November, 1861, when Governor Curtin visited Camp Wayne at West Chester to present a stand of colors to the 97th regiment, Adjutant Carruthers, at the request of his Colonel, stepped forward to receive it. "We shall endeavor," said he, "to bear it victoriously aloft . . . and here in your august presence before this multitude composed of beauty and manhood . . . we this day devote our strongest efforts to the defense of liberty and republican government."

What the measure of his devotion was, may be read in the history of the "97th."

In the siege of Fort Wagner, in the battle of Cold Harbor, in the advance upon Petersburg Heights, Carruthers played it so well that he won the hearty commendation of his superior officers.

"He was always at his post," said Major Price, "and there was no duty, no responsibility,

no danger to be met, which his cool thought and counsel did not render less difficult."

The first loss—perhaps the greatest to the Bar of Chester County during the Civil War—occurred on September 17, 1862, when Colonel Bell fell on the battlefield of Antietam.

Thomas S. Bell was a son of Judge Bell, but he was more distinguished as a lieutenant in the first company that marched from West Chester.

For three months, Bell served as Adjutant of the Ninth Pennsylvania Volunteers; then, Governor Curtin commissioned him Lieutenant-Colonel of the Fifty-first Pennsylvania Volunteers, commanded by Colonel Hartranft.

When I inquired of a veteran of Colonel Bell's regiment how large a man the Colonel was, he promptly answered, "Just my size, five feet six inches high and every inch a soldier."

At Roanoke Island, Colonel Bell's gallant conduct aided much in the success of the Union arms.

At Newburn, when ordered to charge the enemy, he not only took their battery but was the first man to mount it.

At Camden, where he had command of the brigade to which his regiment belonged, his regiment was foremost and led the charge.



NIGHT ATTACK ON ISLAND NO. 10



At Antietam, he fell.

Three months later, on December 31, 1862, Colonel Roberts was killed at the battle of Stone River, near Murfreesboro.

Little more than three years had passed since Roberts left the Bar of Chester County for the Bar of Chicago.

On July 22, 1861, he received his commission as Major of the Forty-Second Illinois Volunteers; soon afterwards, he became their Colonel.

Fighting followed, and in less than a year he was a hero of the army.

The newspapers throughout the country were filled with the story of his daring, while pictorial histories presented their readers with full-page illustrations showing the manner in which the gallant Colonel and his selected crew silenced the upper battery of Island No. 10.

In the midst of a raging storm that threatened instant destruction they had rowed their yawls along the banks of the island, until a flash of lightning revealed them to the sentinels, who fired wildly in the darkness and fled. A few moments later and Roberts's men had jumped ashore and spiked every gun.

On the 30th of December, 1862, Colonel Roberts had the advance of the 20th Army

Corps and drove the rebels to their breast-works.

The 31st was fatal.

His brigade maintained its reputation for bravery by engaging two divisions at once, but a third division of the rebels came on his left flank and rear and compelled his troops to fall back. While attempting to change their front and inspire them to valorous deeds by his own heroic example, a bullet struck him and he fell mortally wounded.

Bell, McIntire, Carruthers and Roberts were the sacrifices which the Bar of Chester County placed upon our country's altar.



COL. GEORGE B. ROBERTS



## FROM WOODWARD TO WANGER

"All kinds of bloodthirstiness, murder and sin."

GOETHE, *Han Sach's Poetical Mission.*

**I**N 1850, an Act of Assembly was passed, creating the office of District Attorney and making the officer elective by the people.

The first choice of the electors fell upon Paschall Woodward, who acted in that capacity until 1853, when he resigned and removed to the West.

Of all the cases tried by Woodward, Commonwealth *vs.* George Pharoah, doubtless excited the most general interest. Pharoah was a nephew of Jabez



George Pharoah.

Boyd and was charged with murdering Rachel Sharpless, a school-teacher, at Rocky Hill. The trial came off at the January sessions of 1851, with William Butler and Joseph J.

Lewis representing the defendant. Pharoah was convicted. Subsequently he confessed his guilt and declared that his purpose in taking Miss Sharpless's life was to obtain her watch.

Upon the resignation of Woodward, J. Smith Futhey was appointed District Attorney for the remaining sessions of 1853, and was elected for the ensuing term.

William Butler followed him and continued in office till November, 1859.

At the November sessions of 1857, Butler represented the Commonwealth in the trial of Charles Philips for the murder of his cousin, Cleaver Bartholomew. Philips lived in Tredyffrin Township, and Bartholomew, whose father's house was nearby, was in the habit of making Philips's house his temporary home.

One evening in May, Bartholomew called upon Philips and asked him to pay a sum of money admittedly due. Philips refused, but invited Bartholomew to remain. Unfortunately, Bartholomew accepted the invitation, whereupon both refreshed themselves with ale and retired to the second story, where they drank more ale and quarrelled. Almost immediately Philips became ugly and threatened to kill his cousin, who foolishly took down a sword and

started toward him. Philips retreated to another room. Bartholomew followed him, but, so far as appeared, made no effort to strike or cut him. A moment later, Philips grasped Bartholomew's sword with one hand and fired with the other. "I have killed Cleave dead," he exclaimed. So he had.

A short time after Philips had been committed to jail he was brought before Judge Haines on a writ of *habeas corpus*. At this hearing, his counsel manifested unusual bitterness, which was greatly increased by the Court's refusal to admit him to bail.

For several months thereafter the case in all its phases formed the main topic of discussion throughout the county. Was Philips guilty, and if so of what? was asked and answered on the streets, in town shops, in country stores, in short wherever men gathered, particularly in that part of the county known as Chester Valley. Feeling ran high. "Judge Haines was right!" "Judge Haines was wrong!" "A cold-blooded murder!" "In self-defense!" "Wait till you've heard John Hickman!"

On the morning of the trial Thaddeus Stevens augmented the interest of the large audience in the court room by sitting down with Hickman,

Lewis and Waddell at the defendant's table. As soon as the case was opened he took the laboring oar. The witnesses for the prosecution were cross-examined mainly by him, and when the testimony was in, he made the closing speech for the defense.

Many of those present at the trial predicted a disagreement; but after the jury had deliberated for seven hours they returned with the verdict, "Guilty of manslaughter."

About the beginning of Butler's term, the emoluments of the District Attorney's office were considerably increased by Legislative changes in the fee bill.

"The District Attorney's office is becoming one of the best in the county," says an editorial of that time. "We learn that the Commissioners paid the officer a bill for \$511.00 for cases tried by him at the August court, and this term will make another not to be sneezed at. We do not pretend to say that our District Attorney is getting more money than he is legally entitled to receive, for we do not think that he is, but we do say that we have grave doubts whether any similar officer ever made as much in a whole year as he has put in his pocket in one term."

It would not be hard to guess the maker of this declaration, but—*nil nisi bonum*—let it pass.

The next member of the Bar to enjoy the increased emolument of the District Attorney's office was Wayne MacVeagh, who affixed his name to the indictments of January term, 1860.

At the August sessions of 1861, MacVeagh represented the Commonwealth's case against Lewis Green, charged with the murder of Jacob Marks, a peddler, commonly known as "Dutch Jake." Green was represented by William Darlington and John J. Pinkerton. Pinkerton had been admitted to the Bar a little more than a year before and had employed his leisure in lecturing on "Poe." This was his first important case. When he was through, the jury convicted Green, and in due time Sheriff Heffelfinger hanged him.

In the Fall of 1862, Henry M. McIntire was elected District Attorney, but, alas! in January of 1863 he died from wounds received in the service of his country.

Upon the death of McIntire the court appointed James J. Creigh to the vacant chair. Later in the year he was elected by the people of the county.

Creigh was followed by Francis C. Hooton; Hooton, by George F. Smith.

At the October sessions of 1870, it fell to Smith's lot to prosecute George Grant for the murder of Amanda Spence. The murder was committed near Shaw's stable, where the public alley running westwardly between Market and Miner streets intersects Walnut street. Although the defendant was colored, his case attracted no little attention. Nimrod Strickland and William B. Waddell were retained to defend him, and labored strenuously, but despite their efforts their client was convicted, convicted largely on circumstantial evidence.

Commonwealth against Grant is the first criminal case at which I was present. The burrs on Grant's coat—the hoarse voice of District Attorney Smith—the insinuating manners of Waddell—the majesty of the law expressing itself in Judge Butler's face and voice—these are my earliest recollections of the court room.

Three years later, at the October sessions of 1873, the case of Commonwealth *vs.* William Eachus Udderzook came on for trial, with a new District Attorney conducting the prosecution, and the most brilliant advocate at the Bar in charge of the defense.

## COMMONWEALTH vs. UDDERZOOK

"There is a cool \$1000 in it."

*Extract from Letter to Rhoads.*

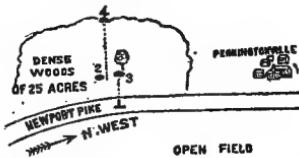
ON Friday the 11th day of July, 1873, the naked trunk of a male human body was found in Baer's Woods between Penningtonville and Cochranville, buried in a shallow grave eleven inches deep. There were several stabs in the right breast and a cut across the throat.

The murdered man was identified as A. C. Wilson. He was also identified as W. S. Goss.

W. S. Goss was an inhabitant of Baltimore and had insured his life to the amount of \$25,000. He was last seen at his shop in that city on the evening of February 2, 1872, in company with W. E. Udderzook, his brother-in-law, and a young man living nearby. When the two left him to go to the house of Udderzook's father, the shop was discovered to be on fire. After it had burned down a body was drawn out of the fire supposed to be that of Goss.

On August 12, 1873, an indictment containing two counts was found against Udderzook: the first count charging him with the murder of Winfield S. Goss; the second, with the murder of an unknown man. From August to October he lay in jail. On Wednesday, October 29, he was arraigned. While the jurymen were being examined, the eyes of the great audience that filled every portion of the court room were fixed upon the prisoner.

Let us see him through the glasses of a spectator.



Udderzook is a man of over average height, of muscular build, but not heavy. His hair is of a peculiar dark red color. He wears a heavy mustache, which is bright red. His face is not attractive, but is intelligent. His teeth are fine and he shows them very distinctly when he smiles, which frequently happens. Sheriff Gill conducts him to a chair within the dock. His dress consists of a whole black cloth suit, with an immaculate white shirt, at the collar of which is a very neat black necktie. He is cleanly shaved and his hair (rather long) is combed in

a most perfect manner. In a few hours the panel is exhausted, and but eight jurymen have been selected. The Sheriff is directed to summon forty talesmen by 2.30 P.M. At that hour he returns the list of forty persons, "summoned under order of the Court."

We recognize many of the habitués of the court room, some of whom, dressed in their best clothes, have been patiently waiting for this for several weeks. The jury is finally selected, and immediately District Attorney Wanger rises to read a motion that he be permitted to call to his aid his friend, Wm. M. Hayes. The Court remarks that it requires no motion, that the District Attorney can associate with him anyone he pleases. Milton Whitney, Wayne MacVeagh and Joseph F. Perdue appear for the defense. It is a rare combination of experience, eloquence and tact. On the side of the Commonwealth is the imperturbable Wanger, whom no unexpected fact can disturb, and no court hurry or dismay. Nor must his colleague, Hayes, be overlooked. He may disdain some of the minor graces of oratory, but in aptitude for work and in facility for expressing truths in homely and forceful illustrations, he has no superior and few equals.

The District Attorney opens for the Commonwealth, and calls John E. Hurford. Mr. Hurford describes the place where the body was buried, and the buzzards that were fighting on the pike over fragments they had torn from the putrid corpse.

Gainor P. Moore tells the jury how he found a tuft of dark hair and went to Rhoads's house to borrow a shovel; how he resurrected the body, asked a stranger in a buggy to be a witness and share the responsibility, and how the stranger declined with thanks and drove rapidly on.

Dr. Elisha Baily testifies to the wounds. Other physicians follow.

Alexander H. Barnitz and Augusta R. Carter, of Baltimore, give their reasons for believing the body found in the woods to be that of W. S. Goss. Mr. Carter among other things identified him by a prominent forehead, and incidentally remarks:

"You, Mr. MacVeagh, have a very fine forehead."

Mr. MacVeagh: "So have you, sir."

By the Court: "Let there be no more levity."

The air is stifling. People of various nationalities, colors, sizes, ages and degrees are here. The number of tipstaffs is doubled, and only

with the utmost effort is the throng kept from the bar and dock. The battery of vigilant eyes is, of course, concentrated on the prisoner. By his side sits his faithful wife, and next to her his aged and sorrow-stricken mother. They have scarcely moved from the time they took their places. David R. Mullin identifies Udderzook's handwriting. "A very particular friend of mine wants to leave Baltimore for a few weeks."

Mrs. Tombs, who lives at Newark, saw the prisoner at her bar on May 11, 1873. "He came to see A. C. Wilson." She identifies a ring.

James R. Williams, a jeweler from New York, also remembers the ring—a fine bloodstone. "Wilson asked me to buy it."

So the trial proceeds for nine days, the Commonwealth adding link to link, until it completes the chain and binds the prisoner. The identity of A. C. Wilson and W. S. Goss is completely established. The photograph of Wilson is the photograph of Goss. The clothes of Wilson belong to Goss, the shirt being stamped with his name. Letters from Wilson are produced in the handwriting of Goss, and other letters are shown to have been mailed by Wilson addressed to relatives of Goss. Wilson and Goss were of the same size, and both were in the

habit of becoming intoxicated. In fact, all of the circumstances point to the defendant. The broken and bloody buggy leaves no room for doubt, and the letter to his friend, Samuel Rhoads, reveals only too clearly his motive for the crime.

"FRIEND SAM: I have something of importance that must be done by word of mouth. . . . As soon as you read this, mount your horse and come to Oxford. Take the morning train to Baltimore. . . . There is a cool \$1000 in it, and there is nothing to prevent us from getting it. . . . You will find it the best day's work you ever did. . . .

"Very respectfully,

"WM. E. UDDERZOOK."

"Be firm; be true."

It is all over now. Tact, eloquence, experience, cannot save him. The prisoner knows it, and is silent and gloomy. He asks the Sheriff what he thinks of the case. The Sheriff answers frankly in a few words:

"I think you are doomed."

The Sheriff is right, but the audience is anxious to hear what MacVeagh can say for him, for MacVeagh can say much and say it well. At length he rises and at once the court room

is still. He begins in the usual congratulatory way, expresses his keen sense of his own responsibility and reminds them that the case is being tried in a murky air, heavy and dark with prejudice against the defendant.

"An impalpable, deadly poison," he calls it, and pleads for "something like justice, something in her guise wearing her smile of impartiality."

With the ending of these prefatory remarks, he pictures the cordon of the defendant's enemies—four insurance companies, a newspaper press and a great Commonwealth. He takes a fling at insurance agents and declares: "We are free nowhere from these creatures. If you go to the uttermost parts of land or sea you find them, they waylay you returning from your business, besiege you during business hours, are the first to be seen in the morning and the last in the evening, always persuading."

Having disposed of insurance agents generally, MacVeagh deals with the facts. "This case hangs upon the photograph and the resemblance of a ring. . . . You are asked to hang this man upon such evidence as this."

Then he pictures the defendant sauntering along a country road, enjoying the delightful weather—going to a public house and taking his

breakfast in public without a spot upon his garments or a wrinkle in his face, and asks the jury if this is the conduct of a murderer.

Finally he pleads for the aged mother, the little children and the faithful wife, and then, having invoked for the defendant the fullest, amplest and best consideration of the great improbabilities with which the case is covered, he resigns him into the hands of the jury with the fervent prayer of our criminal jurisprudence, "May God grant him a safe deliverance."

Hardly is this prayer uttered, till the District Attorney arranges his papers and receives the judicial nod to proceed.

Wanger is an honest man, a brave soldier, even a superior chess player; but he is not an orator like MacVeagh nor a forceful speaker like his colleague Hayes. On the contrary, he is distinctively uninteresting and tedious. He has labored hard to gather together the incriminating facts in this case and with the help of others has succeeded. In his presentation of them, however, he is infelicitous and the jury becomes restless. His argument is not effective, a fact perceptible to everyone else, imperceptible to him. At last he halts and asks a question—a pertinent question, "Where

is the man that went with Udderzook that day?"

Attorneys who were not partial to Wanger asserted afterwards that in summing up the Udderzook case he plagiarized from Webster.

Perhaps he did. If so, he might have pleaded that Webster plagiarized from Sterne. I have not the report of Wanger's speech before me, but I know that he asked the question I have referred to repeatedly and effectively.

I can see him yet, with both hands beneath the tails of his coat, inquiring of the jury, with a most peculiar drawl quickened a little by excitement:

"Where is the man?"

As the jury could not answer the question consistently with the theory of Udderzook's innocence they convicted him of murder in the first degree.



Wm. E. Udderzook.

## A JUDGE

"Who did not find it necessary to waste pages to express an idea."

ON the western wall of the gallery hangs the portrait of Chester County's greatest judge.

Other judges before his time and since have excelled him in particular qualities, but no admirers of other judges have ever claimed for them that rare combination of judicial qualities which distinguished Judge Butler while on the Bench of his native county.

His facility of despatching business was remarkable. He saw the whole outline of a case at a glance and

"On each glance of thought  
Decision followed as the thunderbolt  
Pursues the flash."

Was a case intricate? "He separated the chaff from the wheat almost as soon as he got possession of it."

Was a cause badly argued? It made no difference to its rightful decision, for the lesser

learning of the attorney was supplemented by the greater learning of the Bench.

Was the list long? The hours of labor were increased, and the lighted court room exhibited to the community the value he set upon public time.

Did he occasionally limit counsel in their discussions. Lord Campbell long ago held it to be one of the first duties of a judge "to render it disagreeable to counsel to talk nonsense."

In charging juries he was exceedingly felicitous. His opinions were generally brief, his analyses always clear; in short, as Judge Black said of a still greater judge, "he made others understand him because he understood himself."

To criminal offenders he was seldom indulgent. With an eye that "could have pierced a corselet" he saw every vulnerable spot in their defence, and meted out justice with rigor.

"I was wondering," said a prisoner who had just been sentenced.

"Wondering what?" interrupted the Sheriff.  
"The judge told me that he knew my brother and my father and was disposed to be lenient

with me. I got three years, and I was wondering what I would have got had he known my grandfather!"

"Winning a verdict in Butler's court," said a prominent lawyer, "required the concurrence of thirteen jurors. It was necessary to convince him as well as the jury.

"His mind, however, was thoroughly impartial and open to conviction until his judgment was formed . . .

"His charges were delivered in a clear, distinct voice. *He understood in an unusual degree the advantage of proper emphasis.*"

This last remark recalls an expression of a disappointed attorney of the Chester County Bar who declared, "His charge was all right till he reached that *but!*"

Of the many eulogies pronounced upon his services here and elsewhere, the most unique that I have ever heard was that of an elderly colored man, who looked at his portrait for some time, and then turned to his companion and remarked:

"Bill, do you see that judge?"

"Yes."

"Well Bill (confidentially) it warn't no use tryin' to fool him."



JUDGE WILLIAM BUTLER



The reputation acquired on the Bench in Chester and Delaware Counties was sustained if not increased by Judge Butler after his promotion to the District Court in Philadelphia.

So great an authority as John G. Johnson declared: "As a *misi prius* judge, Judge Butler was inferior only to Judge Sharswood."

"He was always most attentive to the opening statements of counsel, very impatient if they failed to make clear to him the real issue to be decided. When informed of it his comprehension and assimilation of the evidence were wonderful. After the testimony was in, to which he listened throughout with the utmost attention, he was apt to reach a very decided opinion as to what should be the verdict, and he felt his duty not performed unless he made clear to the jury what, in his opinion, ought to be done. His judgment, however, was such that his opinion in this respect and what justice really demanded were very rarely not in unison. He had a most intense dislike of wrong-doing in every form.

## THE BAR IN JUDGE FUTHEY'S DAY

"That hall where once in antiquated state  
The chair of justice held the grave debate."

ROGERS, *Pleasures of Memory*

**I**N 1879, when Governor Hoyt commissioned J. Smith Futhey Judge of the Courts of Chester County, several of the older attorneys had well-nigh ceased to practice. Darlington was bending beneath the weight of more than three-score years and ten, Lewis was almost sightless, Smith as State reporter had been superseded by Norris, Barber was in feeble health and Brinton was contemplating a trip across the Atlantic.

On December 6, Darlington fell in the courthouse corridor and died of paralysis of the heart.

Two days later the members of the Chester County Bar assembled and formulated appropriate resolutions. Those who knew him best spoke of his high conception of the dignity of his profession, of his imperturbability of temperament, of his successes achieved without undue elation and his reverses sustained without despondency.



JUDGE J. SMITH FUTHEY



With his older associates, Darlington had been frank and cordial; with his younger brethren, courteous and generous. His death made a great gap in the ranks.

On April 4, 1883, Lewis ended his long professional career of more than half a century, leaving behind him a reputation for great ability, comprehensiveness of learning and resources.

Meanwhile Smith, dignified, studious and methodical, in some respects the finest character at the Bar, had passed away, after spending the closing months of his life in preparing his last "report."

Smith's daughter was married to the elder Monaghan, who was undoubtedly the most unique figure of that time.

Not a handsome man, like his father-in-law, but more genial and of a strong, emotional nature.

In a case where impassioned utterance was required, where the depths of the human heart were to be stirred, Monaghan was supreme. His intellect needed a little longer time to eddy about the law of a case and his style was somewhat loose, but he was "a reality and no simulacrum," and oftentimes he threw the whole force of his vigorous personality on a single sentence, sometimes on a single word. The effect was

dramatic. When I heard him at his best in denunciatory arraignment I always thought of Booth as "Richelieu" launching the curse of Rome. Monaghan prided himself upon his Irish ancestry.

Of Ireland's literature he knew little, but with her history he was fairly conversant, and no one was more familiar with Irish character. In Hibernian societies, therefore, he was either a prominent member or a welcome guest.

Once upon his return from a Hibernian banquet, while describing its festivities, a member of the Bar interrupted him with the query: "I thought they only admitted Irishmen into such organizations? How did you get in?"

"How did I get in?" repeated Monaghan.

"Yes," continued his interrogator, "for you're not an Irishman."

"Not an Irishman?" exclaimed the distinguished advocate, as he thought of the county called by his family name. "Not an Irishman?"

"No," said his friend, "judged by the poetry of your alleged country you're not an Irishman, for:

By "Mac" and "O"  
You'll always know,  
True Irishmen they say;  
For if they lack  
The "O" or "Mac,"  
No Irishmen are they.'

"In your case all the indicia are lacking."

"The fellow who wrote that stuff," said Monaghan, "was a modern rhymester, who didn't know anything about ancient houses like ours."

Three doors below Monaghan's office, on High street, Washington Townsend's sign might be read; that is, if looked at carefully, for it was old and weather-beaten. Townsend was not a magnetic speaker like Monaghan; in fact, he really lisped. But he had a good mind, with a decided bent towards finance. Throughout the county, throughout the eastern part of the State, he was known as an ideal bank president, conservative, honest and familiar with figures and accounts. But he was not a John Tipp. He neither thought an accountant the greatest character in the world nor himself the greatest accountant.

Yet he was conscious of his powers, and when the citizens of his county made him their representative in Congress the whole country recognized him as an able financier.

Townsend had little imagination but an abundant supply of common sense.

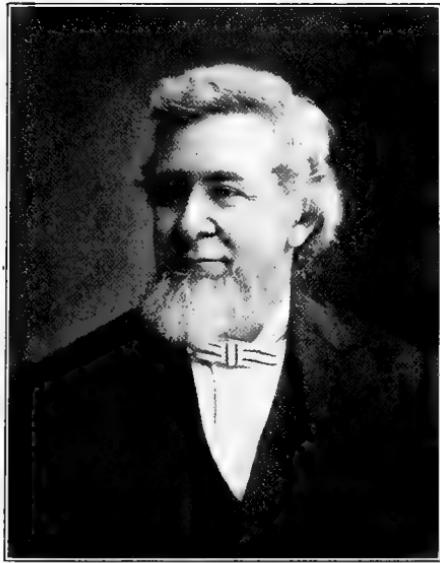
Upon his return from Washington a committee of the "representative citizens of the town"—an uncertain phrase—wished him to

name some day that would be agreeable to him to attend a banquet in his honor. "We desire," said they, "to show our appreciation of your valuable services in Congress."

"Gentlemen," said Townsend, "accept my thanks, but permit me to decline the honor. I am neither hungry nor thirsty; all I need is rest."

To Shakespeare's declaration, "There's no art to find the mind's construction in the face," Townsend was an exception. I looked at him one day, as he stood for a moment between the pillars of the bank he loved, with his fine features set in locks as white as the snow that was falling about him, and I thought there may be purer faces this side of Heaven than Townsend's, but I have never seen them in the flesh, nor on painter's canvas, nor in sculptor's marble.

John M. Brinton was another member of the Bar who was aging fast. A casual look showed a sturdy form, almost as sturdy as ever, but his hair was whitening rapidly and his head was falling forward. He had moved his office to a second-story room in the Brandywine Bank building, on the corner of Market and High streets, where he entertained his friends, advised a few clients, talked aloud with himself and preserved his muscular fiber by an occasional



JOHN M. BRINTON



bout with Morgan the colored janitor, or with any others who were willing. Heavy blows were struck in that second-story room, but nobody ever hit too hard for Brinton.

When I began to read law, Brinton was pointed out to me as the one lawyer at the Chester County Bar who carried in his head all the equity forms he needed. What truth there was in this comment I never knew, but I was not long in discovering from his conversation that he was well acquainted with the history of the prize ring and had witnessed many contests.

As the result of his experience he introduced a novel method for collecting fees.

One day when a stockily built countryman came into his office, Brinton advised him that he had settled an old claim of his advantageously and added, "My fee is fifty dollars."

"I'll give you twenty-five," said the countryman. "Twenty-five is enough, and, more than that, it's all you'll get."

Brinton made no reply but quickly walked to the door, locked it and put the key in his pocket. Then opening a closet, he picked up a pair of boxing gloves, flung them at his client and said: "Put them on, and we'll determine this question."

The issue was quickly decided; a blow from the shoulder followed a feint and the countryman found himself prostrate on the floor.

Brinton calmly looked down upon him and inquired: "What did you say my fee was?"

"Fifty dollars," blubbered his client.

"Well, get up and pay it," said Brinton, "and hereafter never undertake to fix the fees of counsel."

When Futhey was promoted to the Bench he transferred all the clients he could control to Alfred P. Reid. Reid had previously roomed with Washington Townsend and upon the latter's departure from West Chester for Congress had become his residuary legatee. Now, with Futhey's promotion, he found himself in possession of a large practice and manifested his ability by retaining and increasing it.

Reid was emphatically a business lawyer. In his view of life, business was the all-important object. Accordingly he cultivated the habits that insure what is known as "success." He rose early in the morning and could be found at his office at any hour of the day. Of holidays, he hardly knew the meaning, but gave himself unreservedly to work—frequently to common routine work.

When someone remarked in his presence that a certain member of the Bar was "a commonplace fellow," he replied with a little temper: "Suppose he is; it is the commonplace fellows at the Bar and elsewhere that do the work of the world."

In size, Reid was a little above the average height; in manner, brusque; in dress, careless; in the trial of cases thoroughly prepared.

As a counsellor he inspired confidence in his clients by his confidence in himself. Having studied a legal question and formed an opinion, he held to it unwaveringly; but in the conduct of cases before juries his success would unquestionably have been much greater had he associated with him someone who could have presented facts in an interesting manner.

The same degree of pleasure that Pierce experienced in reading a special edition of Horace, or Haines in examining some rare botanical specimen, Reid found in poring over an account.

A mutual friend once informed me that Reid was fond of literature. He may have been, but if so, he had a remarkable faculty for concealing it. His illustrations were crude; his humor, if humor it might be called, was extra dry; in

short, neither his address nor conversation disclosed the man of letters. Reid was preëminently a practical man. A beautiful prospect, the murmur of a stream, the perfume of a flower evoked no response from him.

“A primrose on the river's brim  
A yellow primrose was to him  
And it was nothing more.”

William M. Hayes was another business lawyer with a lucrative practice. Hayes was about the same height as Reid, but stouter. For years he did a prodigious amount of legal work with painstaking carefulness.

Having once satisfied himself about the law and the facts of a case, he fought his clients' battle with a pertinacity that knew no defeat until the highest tribunal had delivered the final word.

To obtain a compromise from Hayes one had to make it plain that the chances were largely against him.

In presenting facts to a jury Hayes was very adroit. He knew how the average man of his day reasoned and he reasoned with him in his own terms and language. When syllogisms interfered, he let them go; when rhetoric had to be slaughtered, he slaughtered it; when audi-

ences must be bored, he bored them. His motto apparently was "*respice finem*," he looked only at the verdict.

Among the various rules laid down by Stephen in his work on *Pleading* is one to the effect that approved precedents should be followed. Hayes adopted this rule in reference to the Attorney's Fee Bill and made short shrift of the mock generosity of executors and administrators that found expression in the words: "I do not wish to charge more than the law allows and trust thee will make thy charges as low as possible." With rapid pen Hayes calculated their five per cent. and then his own attorney's fees according to the card. If exception were taken to the latter, he brought the matter to an abrupt conclusion by the statement: "If thee will reduce thine, I will reduce mine."

The roster of the Bar in Judge Futhey's time would be incomplete without the name of Francis C. Hooton.

To strangers who met him but once, he seemed a tall man with a sonorous voice; to politicians, he was a Republican of Republicans, Quay's friend, prepared at all times to give a reason for his political faith; to soldiers, he was known to be a gallant colonel who had

served his country faithfully in the hour of her need; to the poor, he was a generous friend ready to bestow his last dollar in relief of distress.

Another ardent Republican lawyer of that day was John A. Groff.

Groff was a companionable man who devoted much time to politics and a few spare moments to law.

The chief ornament of his office was a picture of Andrew Jackson at the Hermitage. Groff admired "Old Hickory" and believed in his doctrine, "To the victor belong the spoils."

After several years of practice at the Bar he rose to the dignity of a Justice of the Peace, where he continued to show his wit and imperturbability.

Once, when canvassing for the District Attorneyship, a farmer, whose support he solicited, curtly informed him: "I expect to vote for the candidate who stays at home and attends to his business."

"Delighted to know," blandly replied Groff, "that that fellow is going to get one vote, hitherto he has been wholly neglected."

In the Common Pleas the practice was divided among many; in the Quarter Sessions the business was largely monopolized by William

E. Haines, Thomas W. Pierce and Charles H. Pennypacker.

Haines was a combination of actor and lawyer with botanical sidelines.

Who was the most effective advocate in Futhey's term? might be variously answered. Who was the best cross-examiner? could truthfully evoke but one reply, "Haines."

As a speaker, he had a style both stately and sonorous—like the march of the Roman Consul, such as DeQuincey dreamed of after eating opium.

Few advocates drew larger crowds to the court room than Haines. The announcement that he was to speak in an important case filled every bench. He loved the theatrical, loved to walk about the court room with his hands behind his back, the most picturesque figure of his time.

Nature had endowed Haines liberally, but, unfortunately, he was indolent and, like Deuce-ace, "troubled law boox very little." His civil practice was small and his criminal cases were not very profitable. At the end of a certain August session (the largest of the year) he asked a group of friends to guess the amount of his receipts. "Two hundred dollars," answered one. "No! No!" laughingly replied

Haines, "don't accuse me of extortion. Just sixty dollars and a book case."

Haines's main antagonists were Pierce and Pennypacker. Pierce was a smaller man bodily than Haines, but equally vigorous, though not quite so sensational. He used what remained of his right arm as an anvil on which he hammered out his heated arguments. With a mind stored with classical lore, intimately acquainted with Latin authors, and by far the best Grecian at the Bar, he was able at all times to furnish an effective quotation by way of answer to any observation of opposing counsel.

When Pierce and Haines were on opposite sides the match was even and the honors were generally divided.

Among the lawyers who devoted themselves largely to real estate, Joseph Barnard must be given a place. One who has ever seen him could not fail to recognize him by his dignified carriage and measured tread; so many steps to the minute, so many inches to the step.

Barnard's favorite studies were titles and architecture. Apparently he was familiar with the latter in all of its forms: Egyptian, Greek, Roman, Saracenic, Norman. You had but to name the variety and he would furnish a fitting

disquisition upon it. Under the shadows of the Episcopal Church he would lovingly linger to point out to a companion the beauty of the Gothic arch and lament the introduction of the brick facing about the doors of the edifice. I sometimes thought that cathedrals and minarets formed the substance of his dreams, for he would bubble over with enthusiasm in talking about them.

"If thou wouldest visit fair Melrose aright,  
Go visit it by the pale moonlight,

. . . .  
When its broken arches are black in night,  
And each shafted oriel glimmers white."

"Take that advice," said he, on one occasion, "and moreover put money in thy purse."

I never took his advice, but I can see him now as distinctly as I saw him then, perhaps I had better say "heard" him, rattling the two gold coins that he always carried in his pocket, rattling them that evening a little louder than usual, it seemed to me, as if he would emphasize the thought: "Young man when thou goest to view fair Melrose, put money in thy purse."

The orders of architecture are diverse and each has its admirers. One lauds the luxuriance of the Corinthian and plans the court house; another extols the simplicity of the Doric and builds the Chester County Bank. Could the

birds of the air express their views they would doubtless sing the praises of the Corinthian. Indeed they have already so intelligibly conveyed their ideas, have clung with such devotion to the type they love, so obscured the beauty of the ornamentation by clustering around it, that their gatherings have been forbidden and their nests scattered to the winds.

Law being both a complex science and a luxury, it is fitting that the pillars supporting its temples should be emblematic of its qualities. Accordingly, we find them Corinthian, and we see the Bar upon more than one occasion approving these harmonious ideas by selecting these very pillars as a background for their photographs.

Reverently I take down one of these pictures and look again at certain faces. Fairlamb's is in the center and deservedly so, for his lively conversation and colloquial wit made him easily the central figure of every social occasion. Thomas is standing not far off, with his pallid face and scholarly stoop, looking calmly down the path on which the "impenetrable shadows" are so soon to fall. Needles is absent—Needles whose intellectual gifts were unequalled by any young man of his time. Monaghan, the younger, is there, full of expectancy and richly endowed

with argumentative powers of a high degree: with less wit than Fairlamb, less scholarship than Thomas, less rhetoric than Needles, he had more power than any of them.

In Futhey's day, and long before, many of the prominent attorneys of the Chester County Bar were located in "Lawyers' Row" on High street north of the Green Tree Inn. As soon as spring permitted, it was their habit to bring out their chairs and form a semicircle about one of the trees, generally one in front of Waddell's office. Here every variety of matter was discussed. Waddell regaled his friends with reminiscences of legislative life at Harrisburg, Windle told of his days at Harvard, Bingham equalled them with stories of Princeton, Fairlamb added a few experiences at Yale. When clients hove in sight, the tales were broken off, but after the business had been disposed of it was not unusual to hear, "As I was saying."

A few doors north of Waddell's office was a sign bearing the name of Abner Pyle. Pyle was incidentally a lawyer and primarily a money-loaner, who not only dealt in the usual securities but bought remainders vested and contingent, took assignments of all kinds of interests and discounted auditors' fees and

lawyers' services to executors. At various times he had quite an interesting collection of lawyers' autographs. As an authority on "present worth" he was without a peer and could tell you at a moment's notice the financial standing of any member of the Bar, and of most citizens of West Chester. His business was not based on sentiment, nor did he affect the role of a philanthropist; but he did kindnesses that no one knew, took chances that many would have declined, and never received the meed of praise he really deserved.

Afterwards, in connection with Thomas Brown, Pyle conducted a Kansas dispensary. Many persons who condemned him for charging a little bonus on doubtful notes seemed to be quite willing practically to do the same thing with the inhabitants of Kansas upon landed security. Pyle, however, was not the only dispenser. Kansas had her dispensaries in almost every business square in West Chester. No license was required; her dispensers were all "honorable men" who knew much about commissions—even a little about Kansas. The decorations of their offices were much alike and strictly in harmony with their business. Every wall had at least one map of Kansas—

some had two showing the roads of each county crossing at right angles and marking the State like a checker board. In addition to the maps, there were always a few booklets lying around, illuminated with elevators bursting with grain or eight-wheeled engines puffing and panting as they pulled their heavy loads through the waving wheat of Kansas. Prescott says, in his *History of Peru*, that "contributions to geographical knowledge grow with the slow acquisition of empire." He might have said "of mortgages" and kept within the boundaries of truth. Many a man in West Chester who had long forgotten "Augusta, Maine, on the Kennebec River," was thoroughly acquainted with the bottom lands on the Arkansas, while "ranges," "sections" and "meridians" were in everybody's mouth.

What interested me chiefly was not the mortgages but the applications which accompanied them. These contained descriptions of the properties, together with other valuable information, that could be obtained from no other source; they were also illustrated with drawings in black-and-white, designed to correct any errors in the descriptive language through the lack of strengthening adjectives.

Many of these sketches were marvels of artistic skill. Strange as it may seem, practice had made some of the artists so perfect that they could take a single black line and, without removing their pen from the paper, twist it and turn it until they conducted the water which it represented through every field in the farm—several of them even widened the stream sufficiently to admit a bunch of cows. It is true the artists sometimes failed to observe the cardinal principle of the Pre-Raphaelite school, but then they never claimed relationship to it.

This, however, is a digression. These applications—drawings I should rather call them—were very popular. All classes came to view them: farmers with their milk money, husbands with their wives' money, guardians with their wards' money and others with no money at all. When the tastes of the artist and spectator were in harmony a sale was quickly consummated. I have known a servant girl to give the savings of five years for one of these pictures and esteem herself fortunate in securing it. Of course, as elsewhere, some would-be-purchasers were hard to please: one preferring the stream (for there was at least one stream in every plot) to be

represented by green ink, another by blue. Ingenious illustrators got over this seemingly insurmountable difficulty by introducing two streams, one of each color. These were in great demand.

It seemed to me that some of the purchasers acted very unfairly towards these artists: not content with enjoying their pictures at home, they went to Kansas to view the reality—to see its winding streams and fields of green alfalfa.

I inquired of one of them if he saw the "Additions" on his trip. To this inquiry he made no response, only looked at a lot of tax receipts which he held in his hand, and abruptly left me. At once I realized that he was not a West Chester man. A West Chester tourist of that time might have gone to Rome without seeing the Coliseum, or to London without looking at the Tower, but never to Kansas without visiting the "Additions."

"Additions" were suburban residences attached by taxes to little towns, built hurriedly but designedly, and in many instances exclusively, for West Chester people. They were airy, well supplied with facilities of ingress

and egress, and had enough variety about their decay to satisfy the critical eye of a Ruskin: yet here was this discontented fellow from the country, who had travelled through Kansas and—but why continue? A prosaic fellow like him, were he travelling through Ireland, would find fault with Moore's description of the Vale of Avoca.

Yet these were not the only ones affected by prejudice. A lawyer of West Chester who had acquired a section in a southwestern county, upon witnessing the cyclonic effects of Western winds in transferring his top soil with all that it contained to a neighboring farm, suggested that a modification of the Blackstonian definition of land as something of a permanent and substantial nature might properly be made of land beyond the Mississippi. I noticed, also, in his edition of *Coke on Littleton*, under the statement that "land includeth all castles, houses and other buildings," he had added these words in darkest ink: "Except in Kansas, where a former owner or tenant can move to Oklahoma with his house upon his back."

For myself, I never rose from inspecting applications without paying a tribute to the

power of the pen—without feeling that Lytton had but half expressed the truth when he declared, “The pen is mightier than the sword!” O shade of Lytton! the pen is mightier than the plow! With but a few strokes I have seen it create the loamiest soil on many a farm where the plow could discover nothing but sand.

Towards the close of the last century, when the mortgage shrines were almost deserted, it seemed as if the worship would be revived under another name. Companies were organized that guaranteed to do more than Cagliostro ever dreamed of. Discarded mortgages were collected and cleaned. They were then arranged in groups and given over to trust companies, who deposited them in subterranean vaults where the eye of the investor could never see them. Large commissions accompanied such *lettres de cachet*, probably not too large when one considers the faithful manner in which these custodians kept their trusts, the care they exercised in preventing withdrawals or worthy substitutions, and above all, the secrecy which they preserved about the strange alchemic processes by which these mortgage remnants were converted into

green and golden backed debentures. In truth, few things could be more pleasing to the eye; but their summer of prosperity was brief, for the frosts came with the discovery that they were not always convertible into cash. On a chill November day, as I passed the corner of the old Turk's Head, another auctioneer, with a voice husky with emotion, was crying, "Debentures! Debentures!" and vainly endeavoring to secure a bid. Alas! the gold had lost its lustre, the green had faded into common gray.

## INSTAR OMNIUM—AMONG THE PHILOSOPHERS

“With what assurance they deliver their conjectures”

“**W**HAT does ‘*Instar omnium*’ mean?” asked the Bar Committee of a student. “Among all the stars,” was the reply, as he bowed in a reverential manner to the Board of Examiners. They accepted the compliment (*nemine dissentiente*) but declined the translation, and another name was added to the list of *lettre ferits*.

For many years the Chester County Bar furnished the most brilliant luminaries of that philosophic galaxy that shone on our borough with undiminished luster, until like all meteoric bodies it vanished, leaving not a trace behind. All things were discussed by this Society, “things sacred, things profane, things moral, things evangelical, things past and things to come, things foreign and things at home, things more essential and things circumstantial.”

In this constellation, Pennypacker, Talbot and Barnard were stars of the first magnitude.

At the meetings of the Society they contributed much to its brightness, and occasionally something to its heat.

Not all of the counsellors, however, who attended its sessions learned the virtues of patience and forbearance, by which the *true* philosopher may always be distinguished and without which all other qualities are in vain. Barnard, after enjoying an epicurean feast the night before, went to his office in the morning, and on passing into his yard found a cherry tree partially stripped of its fruit and a baseball lying near its root. Unlike Diogenes, he set out to find a *dishonest* man, who had added to his trespass the more atrocious crime of larceny. He walked into a newspaper establishment near by and asked the editor, in the interests of justice, to point out "the disreputable character whose audacity had qualified him to become the perpetrator of such abominable outrages."

"This is the 'devil,'" said the editor, as a tall and silent young man entered the room and stood at attention, while the counsellor, misinterpreting the remark, proceeded in the usual Socratic manner.

"You, I am given to understand," said he, "are the malicious trespasser who treats my premises as a common. Let me inform you that the garden attached to my office is neither common appendant, appurtenant nor in vicinage. Tell me, you unsanctified purveyor of stolen fruit, where have you stowed my cherries?" The young man made no answer, and the attorney continued: "Do you know why taxation has increased in this State? Mainly because reformatories have to be provided and maintained for such as you!"

A partially suppressed laugh came from the editor, on whom the attorney now poured out a portion of his wrath. "You, who undertake to furnish mental pabulum and moral sustenance for this community; you, who ought to join in this reproof and castigate this rascal; you, by your ill-timed mirth, contribute to augment his criminality."

"My dear fellow," said the editor, "won't you stop? Your discourse has been most admirable, and I have enjoyed it; but the 'devil' on whom you bestowed it is both deaf and dumb!"

Wanger was a better exponent of philosophy than Barnard. Wanger the imperturbable, "District Eternally Wanger," as he was sometimes

called, having played his part as public prosecutor, had settled down in his office, prepared to give advice or play chess, preferably the latter.

He was a kindly disposed man, who occasionally irritated you by his imperturbability.

When a student-at-law (now dead) once knocked him down, Wanger picked himself up and, walking up to his aggressor, calmly said: "I hope that did you some good. I assure you it did me no harm."

A coward! exclaims someone. No! a soldier, as good a soldier as ever wore the blue.

"I never met him afterwards," said his assaulter, "without being conscious of my littleness."

Law is a jealous mistress, yet the charms of other sciences have occasionally called her devotees from her embrace.

Botany lisped her secrets into the ear of Haines, and since his death, made a confidant of Francis Windle. Better than anyone else in the county he could have told you where

"The aster and the crimson sumac gleam."

or where

"The golden-rod is drooping by the road."

Mineralogy had few caverns unexplored by Pennypacker; and Horace himself knew little more about grapes than Bull.

Only once has law had occasion to complain, and that was years ago. A prominent member of the Bar was out when a client called on imperative business. Inquiries were fruitless; the attorney had not been seen. At the suggestion of a friend, a visit was finally made to his house, where the attorney was found dissecting a mouse. A few were disposed to criticise his conduct. He pleaded the example of La Fontaine.

"What did *he* do?" inquired someone.

"Neglected a dinner in his honor," said he, "to attend the funeral of an *ant*."

## LEWIS AND DARLINGTON

“Twill give us joy to hear  
How such a man will speak; with what stern strength  
He'll tear the net, or with what cunning skill  
Untangle all the meshes, one by one.”

LESSING, *Nathan der Weise*.

LEWIS and Darlington, Darlington and Lewis, arrange them as you like, you will do little injustice to either. One wielded the two-handed sword of King Richard; the other, the scimeter of Saladin. Each was deserving of equal honor, unless the severing of the cushion of silk is a less wonderful feat than cutting the bar of iron.

For half a century they met in the legal arena, and a county watched the conflict.

Lewis was born in 1801, Darlington in 1804. In early education, Lewis was peculiarly fortunate. At the boarding school of his father, in New Garden, he was grounded in mathematics; at the Friends' Academy in Philadelphia he studied Latin and Greek under Thomas Dugdale. Meanwhile Darlington was acquiring such an education as the local schools

afforded. In 1825, after completing his legal studies under Chancellor Kent, Lewis returned from New York to West Chester and was admitted to the Bar.

In 1826, Ziba Pyle, William H. Dillingham, and Townsend Haines, a committee appointed by Judge Darlington, reported to the Court that they found his youngest brother "well qualified to practice as an attorney," and he also was admitted.

From that time until December 6, 1879, when Darlington sank down to death in the corridor of the court-house, Lewis and he were oftener arrayed against each other than any other two members of the Bar.

During their life their merits as lawyers were frequently discussed, and for many years after their death the discussion was continued by their friends and their clients.

To Lewis must be conceded the advantage of scholarship, but Darlington's knowledge of human nature was incomparably greater and minuter. Lewis read Montaigne carefully, as a scholar should; Darlington glanced hastily over the *Essays* and closed the book. His own observations had taught him all that the essayist could tell him of practical value.

Their studies were different. Binomial theorems and Kepler's laws were to Lewis as the breath of life; while Darlington's days were passed in the more congenial atmosphere of percentage and banking.

In their public speaking they also differed widely. Lewis garnished his addresses with quotations from foreign tongues; Darlington discarded all ornament and, as his rival said, "never perpetrated a figure of speech unless by accident."

In their legal encounters, Lewis relied upon his knowledge of principles; Darlington upon his familiarity with cases. Was a breach made, Darlington quickly repaired it. In presenting facts to a jury Lewis was formal, often verbose, and always tedious. Darlington, on the other hand, was generally clear, always versatile, and never struggled in "an agony of expression."

When they sat down at their respective tables in the court room, Darlington was never without that smile which meant so much and revealed so little. How much of it was the smile of the man and how much "the smile of the visor that he wore," Lewis could never tell; but one thing he knew by experience, it



WILLIAM DARLINGTON



was the invariable precursor of a prick with that tormenting tongue which no man could tame, and Lewis, least of all, endure.

When his great rival died, on the very threshold of the arena in which he had been a conspicuous figure for nearly half a century, Lewis spoke his eulogy and spoke it fittingly and well. It was a just tribute from a generous heart.

Darlington rendered valuable service to his county by his presence in the Constitutional Conventions of '37 and '73. In the latter, he became a very conspicuous member. He was criticized by some for his "much speaking." The criticism was a just one. He did talk too often. On examination, *Debates of the Constitutional Convention* will show that he spoke on almost everything that came before that body: council of pardons—court of conciliation—legislative apportionment—general elections—municipal elections—oath of office—tax qualifications—woman suffrage—sessions of the Legislature—executive power—term of Governor—change of venue—superintendent of public instruction—erection of new counties—consequential damages by railroad corporations—limitation of actions—dis-

qualification of duellists—probate courts—trial by jury—associate judges—rates of interest—liquor prohibition—debtor's exemption—cumulative voting—compulsory education—free pass system—compensation of judges—declaration of rights, and a multitude of other topics. Barnard declared “he spoke to business more than five hundred times, and in the language of a distinguished Philadelphia member ‘never talked nonsense.’” Had he talked less frequently, however, he would have been listened to more attentively and made a deeper impression.

Against associate judges, Darlington set himself like flint. “When the government was organized,” said he, “the judges of the Supreme Court alone came out and tried issues over all the counties in the present eastern part of the State. There was a use then for associate judges to do Orphans’ Court business in the way it was organized, and they held the courts at the houses where they lived in different parts of the county for convenience of suitors . . . but this is no longer necessary; we have got away beyond that . . . We do not need so many men to administer justice. I hope we shall never need associate judges to overrule president judges.”

On this subject the Chair was compelled to remind the delegate from Chester that his time had expired.

In advocating woman suffrage Darlington sketched Miss Starkweather as an illustration for his argument. "I am proud to say, that in the town in which I live the whole of our public schools are under the general superintendence of a lady, at a salary equal to that of her predecessor, and she performs the work equally well. She is capable, she is honest, she is elevated by it, and the whole system of education in that community is improved under her guidance."

But enough of debates; let us look at the man at the age of seventy-five, through the glasses of Barnard, his eulogist and friend.

His eye is not dim nor his natural force abated; his tall form continues erect, his step elastic; his hair slightly tinged with gray; his spirits are buoyant and his whole mind alert and capable as ever.

The best period of his professional life—the period during which his noblest efforts were put forth and his greatest triumphs achieved —was the twenty years preceding 1863. At least Lewis thought so, and Lewis knew.

"I was generally against him," said he. "He understood his cases from turret to foundation stone . . . He was not a sharp, technical lawyer, nor was he deeply read in black-letter law. He had a distaste for scientific pleading and was destitute of skill as an equity draftsman, but he grasped the merits of the case with a strong hand and struck right at the point in controversy. He was a good business lawyer, who advised discreetly and could be trusted implicitly."

By many persons, Darlington was regarded as cold, unfeeling, relentless, and austere; interested only in amassing money. It required Death to disclose the fact that he was the possessor of virtues of a generous, unobtrusive, unostentatious sort. How deeply these virtues were imprinted upon the hearts of his professional brethren was manifest at a meeting of the Bar immediately after his death, when strong men, schooled to self-control and the repression of their feelings, stood up, dumb for utterance when endeavoring to mention their personal relations to him, and with broken and tremulous voices gave eloquent testimony to his worth.

Darlington's leading characteristics were

courage, sagacity, equanimity, aptness, precision, brevity, and force.

In addition to these qualities he had also a keen appreciation of humor, even when he found himself the object of another's shaft.

A countryman, named Perkins, called at his office one day with some peaches for sale.

"Take them to the house," said Darlington.

Perkins did so and returned for his money.

"How much are they a basket?" inquired the counsellor.

Perkins named a high price.

"Too much," said Darlington; "too much. I can buy them anywhere for less."

"That is true, Mr. Darlington; that is true. My peaches are just like your law: Not a d— bit better than anybody else's, but they've got a little more reputation."

It would be difficult to say whether Chester County owed a greater debt of gratitude to Darlington or Lewis. I incline towards Lewis. He labored hard for the adoption of the district school system and was interested in all educational matters. He was a member of the Chester County Cabinet until that institution was merged into the West Chester Academy. He was the president of the Academy until it in

turn was merged into the West Chester State Normal School.

He never published any books, but his numerous contributions to newspapers showed both copiousness of thought and felicity of expression. Local historians of today frequently refer to his *Letters on the History of Chester County*, and students of literature find his *Lecture on Bayard Taylor* scarcely less interesting than did his hearers who listened to it in the old rooms of the Philosophical Society.

In the field of national politics, Lewis took a leading part, and in 1863 was appointed Commissioner of Internal Revenue by President Lincoln. The relations between them soon became intimate, the President esteeming him highly and frequently consulting him about matters of public interest.

For many years a preliminary examination meant making the acquaintance of Mr. Lewis under very embarrassing circumstances. A youth with legal tendencies who met him for the first time felt like the captain of a vessel confronted by an unexpected iceberg.

Mr. Lewis was noted alike for his learning and irritability. He looked the embodiment

of austerity. In his presence, kings of England, grandees of Spain, bases of logarithmic systems and grammatical rules were all forgotten.

Fortunate, *O terque quarterque beati*, were those to whom it was given to recall their wandering thoughts before the inquisitorial process began. If the candidate were wise he observed the rules formulated for their Argonautic brethren by those who had passed through the dangerous rocks.

1. Answer slowly and deliberately.
2. Do not say too much, lest you say too little.
3. Start an argument, if possible, but do not participate in it.
4. Agree with Mr. Lewis, though you should differ with all the other examiners.

“What books have you read?” inquired Mr. Lewis of a young man fresh from a normal school who presented himself for a preliminary examination.

“Davies’s *Algebra*, Loomis’s *Geometry*, Brown’s *Grammar*, and Caesar’s *Commentaries*,” was the reply.

“Did you ever study conic sections?” continued Mr. Lewis.

“I can’t just recall now,” said the young man thoughtfully.

"Don't recall it? Then you never did. A young man who has studied conic sections remembers the fact."

The candidate perceived his error and hoped that "Blucher or night," or some other relief would quickly come. It came with the very next question.

"What historical books have you read?

Now beyond Quackenbos's *History of the United States* and *Don Quixote*, which could hardly be counted, he had read little or nothing in that line; but he saw his opportunity and embraced it.

"I have read portions of Macaulay, a little of Hume" (I think he afterwards confessed it was the title), "and some pages of Smollett. Lately, however, my leisure time has been consumed in studying a volume of German history by an author by the name of Lewis."

A handwritten signature in cursive script, enclosed in a large oval. The signature reads "Joseph M. Lewis".

"Lewis! Charlton Lewis?" eagerly inquired the examiner.

"I think that was his name," responded the young man.



JOSEPH J. LEWIS



"My son!" said Mr. Lewis.

"Indeed!" exclaimed the ingenious youth.  
"I enjoyed the book very much."

"Gentlemen," said Mr. Lewis, "I do not think it necessary to go further. The young man seems to have selected his books with care and to have read to some purpose."

His favorite question on the "final" was, "What is a conditional limitation?" A mistaken answer to other questions might be pardoned. A mistaken answer to this was fatal.

*Tempora mutant et mutantur.*

## FROM BULL TO BINGHAM

IN January, 1876, James H. Bull took possession of the District Attorney's office and remained there for three years.

Bull was a kindly disposed old man, versed in horticulture, who could prune a grapevine better than he could draw an indictment.

His successor, Thomas W. Pierce, was as vigorous and capable a District Attorney as ever filled the chair. Alert and aggressive, he presented a striking contrast to his predecessor. For many years after his term was ended he was, *toto coelo*, the best criminal lawyer at the Bar. To be cross-examined by "Tom" Pierce was an ordeal which many a witness hesitated to undergo.

Francis H. Windle followed Pierce in 1882. Windle was a quiet, painstaking man who knew more about botany than the rest of the Bar combined.

As a soldier of Battery E, Third Pennsylvania Heavy Artillery, Windle had some unique experiences.

Of a detail of two hundred men, he was one who followed General Butler's army up the James River to Bermuda Hundred. He helped to man the "Burnside," did picket duty for the advance gunboats on the Appomattox, assisted in building "Fort Spring Hill"—the connecting link between the armies of Butler and Grant—and witnessed the heavy cannonading in front of Petersburg.

He was on the Bermuda front when Lincoln passed up the river to Richmond. "We fired a salute in his honor," said Windle, "and in a very short time thereafter we were called upon to fire the guns in mourning for his death."

When he returned to Fortress Monroe, in the spring of '65, Jefferson Davis, Clement C. Clay and other prisoners were brought to Hampton Roads on the "Wm. P. Clyde."

Shortly after she dropped anchor the news came on shore and spread among the soldiers. The excitement was intense—intense but suppressed. Which of the prisoners were to be confined in the casemates that were being rapidly transformed into prison cells?

"On the afternoon of May 22," said Windle, "the soldiers were ordered to fall in line by companies in front of their barracks, to prevent

confusion or outbursts of excitement while Jefferson Davis and Clement C. Clay were crossing the campus from the Water Battery postern, where they entered, to the casemate on the other side of the fortress.

"The soldiers," continued Windle, "were in view of this simple though momentous procession and it was a memorable sight. First came General Miles with Davis, then Colonel Pritchard with Clay, followed by a guard of soldiers. The dress of the prisoners was the familiar Confederate gray.

"All was done in the most perfect order, under the direct supervision of Major-General Halleck and Hon. Charles A. Davis, Assistant Secretary of War."

The dramatic scene of the shackling Windle did not see, but after the shackles had been removed he was appointed one of the guards.

"I heard Davis converse with the officer of the day a number of times," said Windle. "The guards themselves were not allowed to talk with him. He was a very interesting conversationalist. His official life before the war had made him acquainted with many prominent men. He discussed not a few public characters, among them Lincoln and McClellan. He spoke

highly of Lincoln, his honesty and other noble qualities, and expressed the thought that he seemed to be guided by Divine influence.

"Davis had a pleasing voice and a great fund of information."

I acknowledge, reader, that this is somewhat of a digression, but Windle the soldier was a more interesting character than Windle the District Attorney.

John Gheen, who succeeded Windle in office, was active and energetic, consumed little time in his talks to the jury and prided himself upon cleaning up the calendar.

Thomas H. Baldwin, who followed him, was a mild-mannered lawyer who weighed the evidence carefully and as a semi-judicial officer was solicitous that no defendant should receive more than he deserved.

In the fight for the nomination in 1890 "Ned" Bingham and I were candidates, but we did not permit the asperities of politics to interfere with the cordiality of our relations. Frequently we related our experiences to each other. I happened at that time to entertain very decided views on temperance. In canvassing the county I met with a prominent Quaker who surprised me with the statement, "I can-

not support thee on account of thy temperance views."

"Well, I cannot moderate them to suit you," I replied.

"Moderate them! No! Thee would have to strengthen them. They tell me they are not nearly so strong as thy opponent's."

How Bingham laughed as I told him of the incident.

## “NED” BINGHAM

“With frailest bark,  
Year after year, he stemm'd the wildest sea,  
Pain, conflict, cloud, and utter weariness,  
Till the last billow, almost unawares,  
On its rough bosom bore him into rest.”

IT was not a handsome face that nodded to the inquiry, “Is Mr. Bingham in?” The hair was too scanty; the eyes were too close set; the features too irregular; and yet no one ever looked at that head without looking again: Sorrow-stricken sufferers saw kindred furrows in the forehead; beggars waited in expectancy, surveying the generous lines of the mouth; while phrenologists were surprised and delighted to find in one skull so many prominent bumps.

Ned Bingham was essentially an advocate. The court room was the arena in which he was born to play his part, and supremacy in advocacy was for him the supreme ambition of legal life.

Was he *only* an advocate? No, he was more. But why that emphasis on “only”? Are the qualities that constitute an advocate so com-

mon now that we can contemn them? Has deep feeling at last become prevalent? God be thanked, I thought this was the age of light opera. Believe me, the Bar of Chester County will produce many a judge before it gives birth to another Bingham. Judges, when necessary, can be made out of heads; but hearts are required for advocates like Bingham. Think not that advocacy such as his can be resolved into equal parts of voice, words and gymnastic action; it demands a mind familiar with the instincts, passions and affections of our nature, and a heart that has not forgotten how to throb; fire can be kindled only by fire, feeling by feeling. Valuable even as was his training at Princeton, it would yet have been lamentably insufficient for his vocation, had it not been supplemented by a wide acquaintance with the world and by studies in the schools of disappointment and sorrow.

As an advocate he knew the uses of rhetorical drapery and had a fine collection of oratorical catchwords. Does this term smack of demagogic? Call them "pegs," then, as Bingham called them; "pegs" on which he hung his arguments. Now and then a hearer would mentally object to some of these "pegs" as



"NED" BINGHAM



being a little rough, but the arguments were generally good and valid, for Bingham always examined them critically with his eyeglasses before he presented them to his juries. Indeed, what distinguished him as much as anything else from the ordinary advocate, was just this picturesqueness of manner; jocular or oracular as the necessities of his case might require. He could manipulate his handkerchief with the skill of an actor, and ask a question with the abrupt effectiveness of Massillon. Often, however, he presented his arguments naked and unadorned, believing that in such condition their syllogistic strength would appeal most strongly to the reason of the jurors who had been selected to pass upon their merits. Usually the result determined his course to be the right one, although the verdict sometimes demonstrated that it is unwise to regard Phryne's beauty and a legal argument as parallel cases.

Many of Bingham's characteristics he apparently inherited from his father. Some of his father's mannerisms he purposely copied, because he regarded them as effective. Both had an air of confidence in their own resources, and with both there was a tendency to emphasize the last words of forceful sentences, whether

such words were nouns, verbs or prepositions. Their common element of strength lay in their logical faculties; their common element of weakness in their too frequent use of the superlative degree. "As erred the sire so erred the son," but the father less grievously because there are some things in theology, but very few in law, that find their proper expression in terms of this degree. Even with biennial legislatures, law can hardly yet be regarded as "the perfection of reason."

In analyzing cases Bingham's capacity was exceptional. Possibly it was one of the results of his theological studies, for theology in the abstract was not uncongenial aliment to his intellectual nature. He knew Hodge's *Outlines* about as well as Wharton's *Criminal Law*, and always maintained that the Augustinian doctrine of total depravity found abundant confirmation in the experiences of the District Attorney's office. At his family table theology and gastronomy not infrequently met—Bingham had a kindly feeling for both; but I never saw the time that he did not prefer a nicely constructed evidential dovetail to either a dinner or a doctrine. Sherlock Holmes and Bingham would have been friends on sight. "Here's the

foot-print, Sherlock, now where's Friday?" It was this genius for minutiae that made him an expert in tracing the sources of crime, while his intellectual vigor and readiness of speech generally insured the conviction of the offenders.

Great as Bingham's logical faculty was, it had not been developed at the expense of his wit. Captain Sentry himself, had he known Ned Bingham, would have accorded him a place among the few pleaders who make "tolerable companions."

Who that heard it could ever forget the story of a preliminary examination that he conducted in Downingtown, where certain witnesses were expected to testify for the Commonwealth against four defendants that were charged with burglary. One of these defendants had turned State's evidence, and had sworn that in pursuance of a previous agreement they all met at his house and arranged the details of the proposed burglary. In accordance with the rules of evidence it was necessary to corroborate this testimony, and the witness upon whom the Commonwealth relied was a colored man by the name of Sam.

"He looked like a knowing witness," said Bingham, "so I immediately began to make

the usual inquiries. First I asked him if *he* was there; then I asked him if the defendants were there. To these questions he promptly answered, ‘Yes.’ Then I inquired if others were there. He thought there were, but could not recall their names without assistance, so I suggested a few at random, such as John Doe, Richard Roe, James Smith, and Edward Thomas. To my amazement he remembered them all. Of course the witness was valueless, but the committee whom I represented wished me to catechise him a little further, so I straightened up and said:

“Sam, listen to me. So far you’ve answered my questions very satisfactorily. You’ve told us the other fellows who were there. Now just one more question, Did you at any time that night see Alexander the Great there?

‘Did you say Alexander the Great, boss?’

‘Yes, I said Alexander the Great.’

‘Wall, now, since you mention it, boss, dere war an Alexander dere, but weder it war de great Alexander I dunno, but pears to me it war.’ ”

If Bingham was more successful in criminal cases than in civil, it was because his practice consisted mainly of the former. Once, after

trying a cause in the Common Pleas and losing it, he asked me to account for its loss. Of course I declined such an impossible task and listened to him as he said: "It couldn't have been the fault of the witnesses, for they testified well; nor yet of the facts, for they were meritorious." Then looking downwards, he suddenly slapped me on the shoulder and observed, "I see it now—fool that I was not to see it before. It was these confounded duck trousers. Any man of ordinary intelligence ought to know better than to wear duck trousers when he is trying an important case before a Chester County jury of farmers."

When Bingham's intellect was at its best, his physical powers failed him. For years a progressive ataxia prevented him from engaging fully in the activities of his profession, and yet in spite of his disabilities he was constantly adding to his knowledge of law and playing no inconsiderable part in the politics of his country. If in literature his reading was narrow, his foundations at least were solid, and he built according to his liking. Of poetry he had little appreciation; aside from the doggerel of the stump, I never heard him quote but two lines in his life, and these under unusual circum-

stances. He had just finished a murder trial and the jury were out. Manifestly the case was a close one and the logic of the testimony was "first degree" or nothing. Upon entering his office I expected to find him resting on his lounge, but I found him instead slowly pacing the floor, gravely repeating the solemn words,

"Dies irae, dies illa  
Solvet saeclum in favilla."

"That's poetry," he said, on noticing my presence, "in its highest form." I answered and left him.

Some of his friends regarded his literary tastes as peculiar and thought his legal pursuits had greatly affected them. To an inquiry whether he had read a recent novel, he replied in Yankee fashion by asking his inquirer if he had read *The Moonstone* and *The Wandering Jew*. "There's no marine sketch," said he, "like Collin's *Shivering Sands*, and no modern picture that equals Sue's portraiture of old Rodin, with his reptile eye and cadaverous face, bending over his huge globe marked with little red crosses or rubbing his hands and writing of his superior, 'He is gone, but he hesitated.'"

Unlike d'Aigrigny, however, Bingham, upon

receiving his summons, left the court room with a feeble step but a smiling face. Although sickness had reduced him to little more than a bundle of nerves, he subordinated emotion to reason, as he parted forever with the ambitions of years. Henceforth his life was mainly at his home. Here his friends frequently called and here he illustrated the generous qualities of his nature to the full. Let me relate but one incident of his kindness to "the world's disinherited." On an afternoon in the fall when alone at his lunch he noticed one of this class passing the window. Bingham heard the customary appeal for help and the domestic's refusal. Summoning his servant, he ordered him to call the man back and show him in. "Is it food you're after?" said he. "If it is, take that chair," pointing to one at the opposite end of the table, "*and while I eat, you eat.*"

Had Bingham no faults? Yes, reader, some quite grievous ones; but had you seen him as I saw him, bearing his burdens with stoical calmness, looking Incurable Disease squarely in the face, suffering it neither to affect his temper nor cast its gloom upon his soul, you would have felt that the imperfections of such a man had a peculiar claim on your forbear-

ance; and you would say as I say now, “The judgment seat is not for me.”

The closing years of his life were spent at the “Woods,” near Oxford. From Oxford he was ordered South. Good-bye, Ned! In the book of thy experiences thou shalt write but a few more pages; for thee, the triumphs of the Bar are over, the contests of politics are past,

*“Thou wast ever a fighter, so—one fight more,  
The best and the last.”*

A few months later, the fight was fought, the pages were written, and the hand that wrote them lay covered with flowers.

## PORTRAITS

"Imagine—judge  
What in this dwelling one must say, who sees  
These heroes."

HUGO, *Hernani*.

AT the top of the marble stairway in the annex is an open space from which the corridors lead to the court rooms and the law library.

On every side, between the doors of the jury room, above the lockers of the jurymen, on the pillars of the arches, portraits of judges who once sat on the Bench of Chester County look down in quiet dignity upon the bustling throng before them, made up of prosecutors and defendants, with here and there a group of anxious witnesses awaiting the call of the crier or the summons of the Grand Jury.

Atlee, Wilson, Darlington, Nill, Chapman, Haines, Butler, Futhey, Waddell and Hemp-hill—all are here! Here? No,

"They are no longer here, they all are gone  
Into the land of shadows."

We have only portraits and memories.  
To this gallery we take our visitors. Here, we recite the virtues of our judges; in some instances, recite them with all the pride Don Gomez felt when standing before the portrait of his ancestors he saved Hernani from the jury of Don Carlos.

The general expression of these faces is one of austere and calm indifference. Once, however, on an afternoon in early summer when the janitor's homeward footsteps were dying out these passive features seemed to be quickened into life. Was it fancy or did I really see Judge Futhey incline his head towards his friend, Judge Haines, who was reminiscently repeating the rhythmical story of Bob Fletcher:

"I once knew a ploughman,  
Bob Fletcher by name,  
Who was old and was ugly,  
And so was his dame;  
Yet they lived quite contented  
And free from all strife,  
Bob Fletcher, the ploughman,  
And Judy his wife.

"As the morn streaked the East  
And the night fled away,  
They would rise up to labor,  
Refreshed for the day;  
And the song of the lark  
As it rose on the gale,  
Found Bob at the plough  
And his wife at the pail.

"I have passed by his door  
When the evening was gray,  
And the hill and the landscape  
Were fading away,  
And have heard at the cottage  
With grateful surprise,  
The voice of thanksgiving  
Like incense arise.

"And I thought of the proud  
Who would look down with scorn,  
Of the neat little cottage  
The grove and the thorn;  
And have felt that the tumult  
And pleasure of life,  
Were dross to contentment  
With Bob and his wife."

Possibly no two characters could be selected out of this gallery of portraits who were more dissimilar in mental traits than Futhey and Haines.

One was fond of work, the other of ease. When Haines was retiring to rest, Futhey was beginning the heaviest labors of the day.

At the Bar, Futhey courted accounts and took a prominent place in the Orphans' Court, while Haines loved trials, and drifted into the Common Pleas. Each found his appropriate sphere. Neither would have achieved success in the other's province, for Futhey, although a wide reader, was neither a ready nor forceful speaker, and Haines as a collector of precedents would have made but a sorry figure. In one respect

they were alike, both "cultivated kindness as a valuable part of the business of life."

If Futhey had not the brilliancy of Haines, to him more than to anyone else belonged the beatitude of the peace maker, for he found no pleasure in strife.

Both left honorable records behind them. Futhey as the ablest Orphans' Court lawyer that ever sat on the Bench; Haines as Secretary of the Commonwealth and Treasurer of the United States.

*The History of Chester County* is a memorial of Futhey's patient and laborious industry. It is true, its style might be more varied and its biographies more interesting, but it must be remembered that the book was written in the intervals of a very busy life, intervals that are usually devoted to pleasure. Moreover, "biography," according to so eminent an authority as Dr. Johnson, "is rarely well executed. They only who live with a man can write his life with any genuine exactness and discrimination, and few people who have lived with a man know what to remark about him." Let critics consider that *The Life of Samuel Johnson* required not only James Boswell as a writer, but Samuel Johnson as a character. Doubtless

other members of the Chester County Bar could have written a more entertaining history, although I know of but one attorney of his time who had the extensive knowledge of men and events that Futhey possessed.

While at the Bar, Futhey made numerous historical addresses, and after his elevation to the Bench he added to his knowledge of Chester County by frequent conversations with a few friends whom he called "connecting links between the outside world and himself."

In the quiet of his office, Futhey loved to hear a humorous story, and he could tell one. But he never laughed aloud. He opened his mouth as far as the muscles would permit, but there was no more noise than one hears in looking at the picture of the "Two Priests."

Genial and generous, Futhey made everybody easy in his presence, "overpowered nobody by the superiority of his talents," and when he died, men everywhere mourned not merely the loss of a judge, but the loss of a friend, the loss of a man.

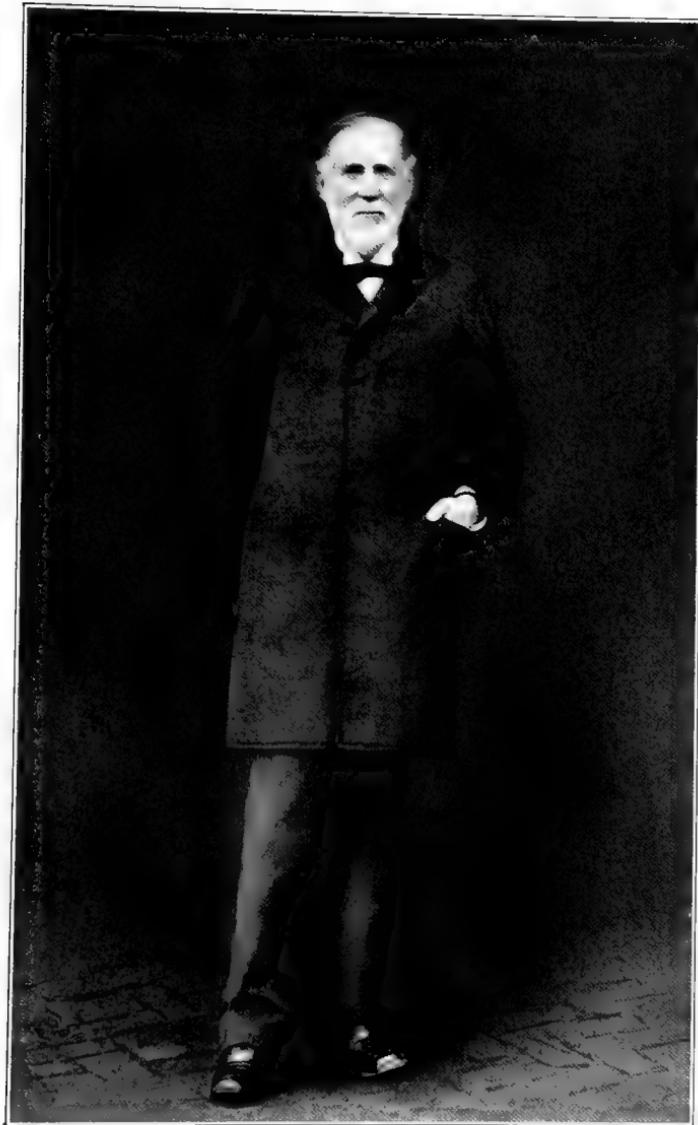
When Judge Butler vacated the Bench of Chester County for the District Court of Philadelphia, members of the Bar asked one another, "Will it be Futhey or Waddell?"

Major Moore informed some friends at Pinkerton's office that there was but one answer to the question. "The appointment," said he, "will be made by Cameron for services rendered some years ago and the appointee's name will be Futhey."

Moore's prophecy proved true, Futhey went on the Bench, Waddell continued at the Bar. His friends were disappointed. Except in Orphans' Court business, they believed Waddell's judicial qualifications to be greatly superior. Futhey had made no figure in Common Pleas, while Waddell had acquired a reputation both as examiner and advocate. Some members of the Bar, like Fulton, of Oxford, could scarcely conceal their sorrow. Others lamented mainly because of the loaves and fishes they hoped to receive from Waddell's practice in the event of his elevation.

It was surmised by many, it was well known by a few, that Futhey, so far as he was able, would transfer his legal business to Reid.

Politically, Waddell was not popular. Those who liked him, liked him fervently. "There was nothing in reason that I would not have done for Waddell," said Fulton, "he was the one man at the Bar I loved."



JUDGE WILLIAM B. WADDELL



Those who disliked Waddell were equally strong in expressing it: "Brusque," said they, "unsociable," and "carries his head at an angle of forty-five degrees."

In the three-cornered Congressional fight Waddell had been twice defeated for the nomination by James B. Everhart. When the issue was renewed for the third time, Waddell withdrew in favor of Smedley Darlington. Darlington was nominated and an additional judgeship was speedily created, to which Waddell was promptly appointed.

At first he held his court in the old law library. In 1892, however, the annex was built, whereupon he betook himself to the attractive court room there provided for the trial of cases.

It is not hyperbole to say that Waddell was the most merciful judge that ever sat on the Bench of Chester County.

He recognized the frailties and infirmities of human nature—the pressure of environment—the temptations to which poverty is subjected, and adapted his sentences to the conditions of each case. Early in his judicial career he declared: "I want every man that comes into my court charged with crime to have a fair chance for his white alley." Every man got it.

"Waddell had more consideration for the weakness of defendants," said Bingham, "than any other judge I ever met."

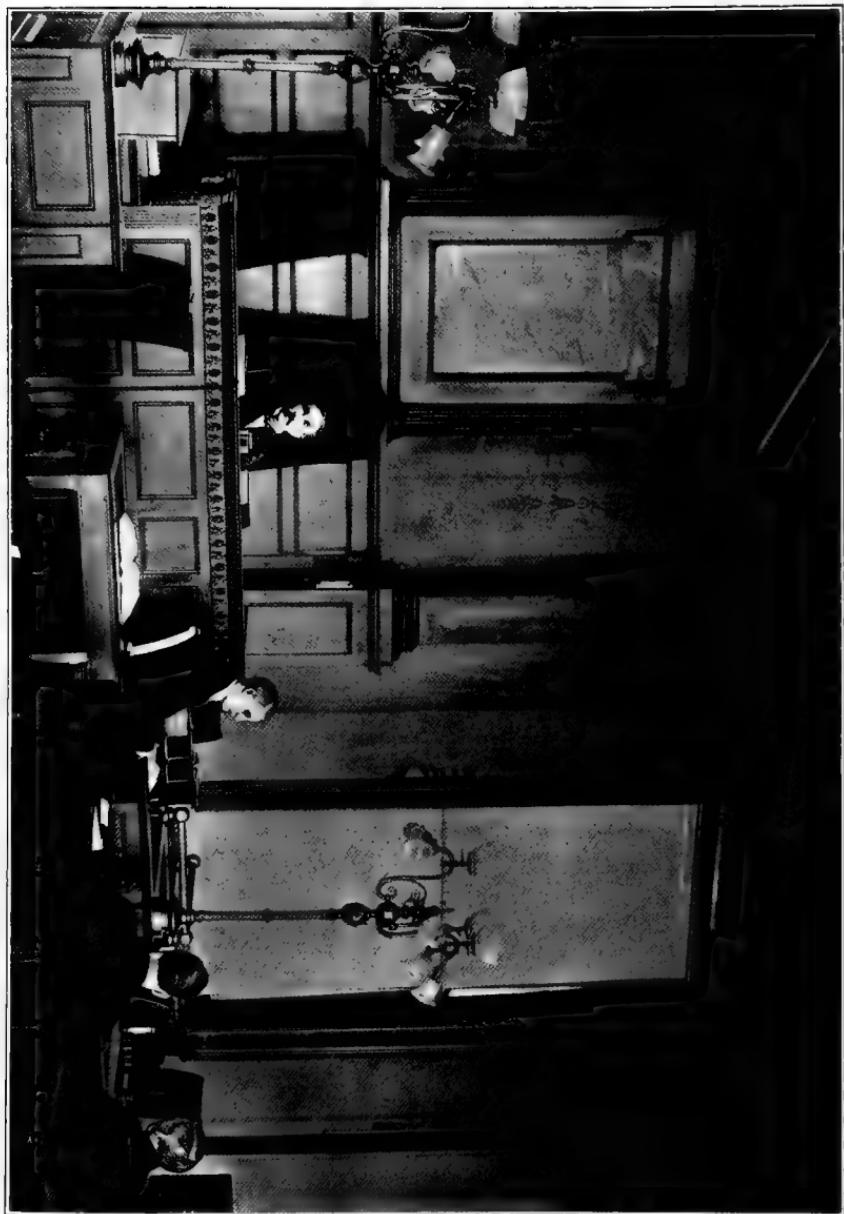
When Elvin was convicted of murder in the first degree, Waddell insisted that the District Attorney accept a plea of second degree, because of mitigating circumstances.

He found these mitigating circumstances in almost every case. Now and then advantage was taken of his kindness. I recall one instance where a practitioner, now dead, imported from Philadelphia a woman with a child at her breast and palmed them off as the family of his client. The situation touched the sensibilities of Judge Waddell and he considerably suspended sentence.

A weakness! exclaims someone. Doubtless, but a most amiable weakness, that at the last day will be found perhaps to have worked better results than those attained by excessive severity.

Certain lawyers of Judge Waddell's time who disliked him, claimed that in the distribution of audits he was moved by favoritism. He had his favorites, but so had Futhey—pronouncedly so—the only difference between them being that Waddell frankly admitted the fact.

Some members of the Bar fattened upon



JUDGE JOSEPH HEMPHILL



loaves that fell from the judicial table, others were compelled to be content with crumbs, while opposite the names of a few were written those sad and significant words "*etre oublié*."

However, as the Bar did not suffer from a judicially created Auditor-General it was content.

Waddell seldom exhibited any testiness on the Bench. Once, however, provoked by the apparent carelessness and indifference of the Bar, he threatened to non-suit every plaintiff who was not ready for trial when his case was reached unless reasons entirely satisfactory to the Court were presented by counsel.

Case after case fell under the judicial scythe. Attorneys urged delay, but Waddell was obdurate. Finally, it was Wanger's turn.

"Is your client here?" asked Waddell.

"No, your honor," answered Wanger, in his blandest manner; "he isn't here, because he couldn't come."

"Did you notify him?"

"No, your honor, I didn't think it was necessary."

"Well," said Waddell, as he made an entry in his docket, "we'll stimulate both him and his counsel by entering a non-suit."

"But, your honor," drawled Wanger, "that won't do any good."

"Why not?" inquired Waddell.

"Because," said Wanger, "as I have been trying to tell your honor, my client is dead."

O Abraham! none but thyself could be thy parallel.

When Waddell died, in 1897, William Butler, Jr., was elected associate law judge at the early age of thirty-five.

Alongside of the crayon of Waddell hangs that of the late Judge Hemphill. Associated on the Bench for years, as these judges were, it is peculiarly fitting that their portraits should hang side by side. And yet, looked at either as lawyers or judges, they were most unlike.

As a lawyer, Waddell exhibited on the trial of a case a suavity of manner, a clearness of statement, and above all a knowledge of those arguments that ordinarily weigh heavily with jurors. Moreover, if details were lacking he supplied the void with assurance and suggestions that were very effective.

"After all, law is common sense," was a favorite expression of his, and many a jury, who heard it, not only endorsed the sentiment but accepted his interpretation of it as well.



JUDGE THOMAS S. BUTLER



Hemphill, on the other hand, relied altogether upon an orderly arrangement of facts—nothing was too small to be noted. He could rely upon little else, for the charm of speech and the ability to present the facts of a cause either interestingly or forcibly were not his. In fact he lacked most, if not all, of the qualities that distinguished Waddell.

On February 13, 1889, Thomas S. Butler had been appointed by Governor Beaver to fill the vacancy occasioned by the death of Judge Futhey. Shortly after his appointment he took the oath of office and assumed the duties of Associate Judge. In the following Fall he was nominated by the Republican party, but a combination of the liquor interests with the Independents and Democrats defeated him and Joseph Hemphill was elected by the narrow margin of thirty-two votes.

Had Butler remained on the Bench, Chester County would have lost the services of a valuable Congressman, who for more than twenty years has demonstrated his possession of the essential qualities that make for efficiency.

Hemphill's election, in 1899, brought to the Bench a lawyer who had but little experience either in Common Pleas or Quarter Sessions.

This was unfortunate, but time accomplished much and molded him into a creditable judge. If he lacked the learning of Wilson, the acumen of Butler, and the Orphans' Court knowledge of Futhey, he unquestionably possessed and displayed on the Bench a fine judicial temperament for nearly a quarter of a century. Even when in wretched health, he was rarely irritable and seldom if ever failed to grant ample time to the youngest or dreariest counsel at the Bar for the presentation of both law and facts.

It is true, he had a peculiar chuckle that was not agreeable; in fact, was ominous: It signified that the judge had made up his mind adversely and it sounded with all the disturbing force of an alarm clock. Such at least was its effect upon an old practitioner. But it must also be said that if, occasionally, he formed and evinced decided opinions before all the evidence in a cause had been presented, he had no false pride about changing them when they were shown to be erroneous.

A lawyer who had travelled through England and visited her courts, remarked that Hemphill looked like an English judge. To this impression certain peculiarities of dress contributed not a little. A wide collar, large glasses



JUDGE ROBERT S. GAWTHROP



thrown back on the forehead or far down on the nose, with a bandanna of no mean pretensions frequently in evidence, differentiated him from the ordinary judge. The remark would not have been objected to by Hemphill, for he was a great admirer of the English Bench, and in forming his judgments loved to discover an English precedent.

Upon Hemphill's death, in 1915, Governor Brumbaugh appointed Robert S. Gawthrop associate law judge. Mr. Gawthrop filled the office creditably and the Republicans nominated him as their candidate. The Democrats and Independents named J. Frank E. Hause. Mr. Hause was elected.

## JOHN PINKERTON

“O Brother! 'tis one thing for a soldier to gather laurels, and  
'tis another to scatter cypress.”

STERNE, *Tristram Shandy*.

“**A** MEETING of the Bar? Whom do we canonize today?”

I told him.

“MacElree, what do you suppose would happen if, at one of these meetings, we should paint a member of the Bar, according to Cromwellian rules, not a wart left out?”

“I fancy, Mr. Pinkerton,” said I, “that it would be well for the portrait painters to start immediately for some country with which we have no extradition treaty.”

The resolutions which the Bar Committee passed that day were not strictly in accordance with Cromwellian rules; neither is this sketch.

MacVeagh and Pinkerton! Such was the name of the firm of which John Pinkerton was a partner.

The members of the Bar frequently referred to MacVeagh as “Mac,” but never to Pinkerton as “Jack.”

We had our "Bob" Monaghan, "Wash" Townsend, "Joe" Lewis, "Bill" Haines, "Ned" Bingham, "Charlie" Pennypacker, but no "Jack" Pinkerton. Only once did I ever hear him called by that endearing name. Samuel Bancroft asked me if I knew his friend, "Jack" Pinkerton, and I—I took several moments to determine whether I did or not.

Pinkerton was an emphasizer and illustrator of neatness. His paper books were in proper form, his dress was in proper form, his speeches were in proper form; indeed, their excessive propriety of form gave them at times an artificial air, which detracted greatly from their effectiveness.

Erskine was his model. No one knew the speeches of this "first advocate of the English Bar" better than Pinkerton. I doubt if John Stockdale himself, or even Captain Baillie—who took down in short-hand and published the words of his eminent counsel—had a more exact acquaintanceship with the arguments and language used in his defence than that possessed by Pinkerton.

Apart from the law, his chief studies were English history and English literature. He loved to roam in the old Elizabethan fields

and was an avowed worshiper at the shrine of Sir Philip Sidney.

He was particularly a reader of English critics, especially of Matthew Arnold. Yes! he was more than a reader, he was an admirer, almost a follower of that so-called "Apostle of Sweetness and Light."

To attain a familiar and elegant English style Pinkerton gave many days and nights, not to the volumes of Addison, as Samuel Johnson directed, but to the writings of George William Curtis. He read everything that Curtis wrote, filled his scrap-book with copious extracts from Curtis's magazine articles, copied some of them and corresponded with their author.

By these means he acquired an easy and graceful style in writing which affected his speaking as well. In his later years he became a delightful after-dinner speaker—in fact, could say agreeable nothings in a more entertaining manner than any man in the county.

He essayed to be a lecturer. He talked on Sir Philip Sidney and Alexander Hamilton, but he lacked that indefinable something called magnetism, and awakened little interest except by his causticity.

Pinkerton's learning was confined to English.

With the language of Goethe and Schiller he had no acquaintance, and of French literature he had little knowledge except what he gleaned from English critics. He amused himself, however, with a book entitled *Wit, Wisdom, etc., of the French*, which, with a few maxims of La Rochefoucauld, answered all the demands that were made upon him in West Chester.

La Rochefoucauld's maxims he was constantly quoting, for he found, or thought he found, illustrations of them everywhere about him; in short, he accepted them as the rules by which men generally govern their lives.

As a lawyer Pinkerton prided himself—and justly so—on his knowledge of pleading. He had read with care every Pennsylvania case upon that subject, knew his *Saunders* better than any of his contemporaries and had no sympathy with any efforts to simplify the science.

He was as familiar with *Stephen on Pleading* as he was with Sterne's *Sentimental Journey* and as "examiner" in this branch of the law was decidedly thorough. One of the first questions usually asked by him was to define the subjects of trespass on the case; the answer being, "*torts, wrongs, and grievances.*" By way of introduc-

tion, I once informed a would-be practitioner of this question and answer, and having given him my benediction awaited results. His examination was shorter than he anticipated and he returned delighted with his examiner. "Pinkerton asked me that question," said he, "and I told him the answer so quickly that it seemed to surprise him; in fact, he asked me no other questions."

"What did you tell him?" I inquired.

"I told him that the subjects of trespass on the case were, *crimes*, *felonies*, and *misdemeanors*."

It was Pinkerton's joy—aye, his quintessence of delight—to be regarded as a corporation lawyer. From station-master at Downingtown he climbed to the position of local counsel for the Pennsylvania Railroad, and made its interests his own to such an extent that not infrequently counsel who recovered what he considered excessive verdicts against his client became the objects of his resentment.

Pinkerton hoped to be judge. For this position he had many qualifications, but he found the political forces on which he had counted arrayed against him, and he fell "on the other side."

"I should like to call the cases for just one term," said he, "and non-suit every lawyer that wasn't ready."

His defeat embittered him somewhat, but it should not have surprised him, for it was strictly in harmony with one of the maxims of his favorite, La Rochefoucauld.

Pinkerton's clientage numbered several notable persons, of whom Bayard Taylor was one. I saw him at Pinkerton's office shortly after he had been appointed Ambassador to Germany. He looked the part of ambassador even more than that of poet.

There, too, I met the brilliant editor of the Philadelphia *Press*—soon to become Ambassador to Russia—Charles Emory Smith. How alert he was, with his mental powers in readiness for action at a moment's notice! Pinkerton greatly admired him.

But of all the distinguished visitors to this office I looked with most curious eyes at Richard McMurtrie, who sat in an easy chair, feet high above his head, his red face and redder tie half hidden behind Pepys's *Diary*.

And this is the man who dared to say to the Supreme Court, when inquired of by the Chief Justice, "How do we know that this is *the law?*"

“Your Honors may know it's *the law* because it is told you by a man who *knows the law.*”

Gone, all gone! Taylor, Smith, McMurtrie, and Pinkerton—gone, too, is Thomas, who translated his Latin, and Needles, who kept his records and prepared his reports.

## “CHARLIE” PENNYPACKER

“Mirth cannot be excessive, but is always good; contrariwise, melancholy is always bad.”

SPINOZA, *The Ethics of Human Bondage*.

FOR a quarter of a century “Charlie” Pennypacker was a unique figure at the Chester County Bar. His six feet three inches of height, crowned with a head which required a seven and three-quarters hat to cover it, attracted the attention of strangers to the town and his speech held them. “Charlie’s” argument was not always convincing, but his manner and address were invariably entertaining:

“Who speaks on the case?” “Pennypacker.” How often have I seen the court room crowded by the circulation of that answer.

Was Pennypacker a great lawyer? No. With the leading cases, which Horace Binney called the *lighthouses* of the law, he was sufficiently familiar; but a great many passages he had never sounded, nor was he acquainted with the charts which others had made. In

later life he realized his lack in this respect, realized it with sadness and remarked: "Principles count for little now, we are breeding a litter of case lawyers."

Was Pennypacker a great advocate? He might have been, for he had peculiar gifts. A fondness for argument, a vast fund of varied information, a winged imagination, a forceful manner, and at times an earnestness that weighed tremendously on the juries he addressed; but he was apt, too apt, to let humor seize the reins of his mind and drive him wherever it would.

Humor was his essential characteristic—it oozed out of his very pores. Like Charles Lamb, he was fond even of a good pun.

"Shall I treat this case seriously or jocularly?" he asked me, when about to sum up in an important criminal trial. I wrote on the slip of paper that contained his question, "For Heaven's sake, *seriously*." He did so, and the case was won.

The temptation, however, often proved too great for him and his cases were sacrificed on the altar of his humor. Returning from lunch one day, a juryman stopped me and inquired, "Did you hear Pennypacker this morning?"



CHARLES H. PENNYPACKER



"No," I replied, "was he clever?" "Clever," said he, "I never heard anything funnier. Do you know," he continued, "I have been to Keith's many a time without hearing anything half so good."

"Your verdict is in?" I queried.

"Yes."

"Don't tell me what it was, let me guess. You found against Pennypacker's client?"

"Of course we did," said he, "we had to, but it was a great speech—my sides ache yet."

Alas, poor Yorick!

In the early part of his practice at the Bar his charges were high, but in his later years I noticed that his fees were moderate, very moderate. He was not intent on acquiring money, not the kind of lawyer that Theodore Parker sketched—too numerous by far—with a face of parchment whereon is written a bill of sale—so much for so much. Like Sherlock Holmes, Pennypacker could always be approached on the side of kindness. The aged, the friendless, the poor, all found in "Charlie" a willing and resourceful advocate.

In natural capacity, Pennypacker was the peer of any man in the county. The appropriate theatre for the manifestation of his

talents, in the judgment of his friends, was the Halls of Congress. No one was more familiar with the political history of our country, and his observations had supplied him with abundant illustrations. Besides these qualifications, he could think on his feet.

With much patient research, Pennypacker had collected a mass of material for a History of Chester County. It might not have proved to be strictly accurate, but it would certainly have been readable. Its publication was one of the ambitions of his life, but to meet the expenses thereof he discovered that it would be necessary (if he followed established precedents) to fill half of his book at least with fulsome eulogies of those whose only merit lay in their ability to pay for their portrait.

When I suggested the possibility that the Historical Society might be interested, he looked at me for a moment, smiled sarcastically and observed: "MacElree, I have calculated this matter accurately. Three per cent of the society's members know a little about local history—the remaining ninety-seven per cent are interested only in the annual banquet."

"Charlie" filled but one office in the gift of

the people—Chief Burgess of West Chester. It was the merit of his administration that no distinction was made between the wealthy and the indigent. The poor man who shovelled snow from his pavement immediately after the storm, did so willingly, for he knew that the rich man at the other end of town was doing the same thing.

Shortly after his election, “Charlie” began the work of cleaning up the town and announced to his constituents that he must sing the praise and expound the shining glory of whitewash.

“It sweetens the air and purifies the landscape. It jolts the typhoid germ, and extinguishes its vitality. It is the friend of cleanliness. It is the foe of disease. It is the white badge of gentility. All hail to the whitewash brush, and the sun-bonneted angel who wields it as deftly as she touches the keys of a piano, or toys with a buckwheat flapjack, until its russet hue and aromatic incense proclaim its readiness for a gustatory disappearance!”

As a Burgess, he began at the bottom: “Show me the house cellar,” said he, “and I will tell you what sort of people live upstairs.”

Unlike a famous humorist, he found no fault with the maxim, “Cleanliness is next to Godli-

ness." Nay, he was constantly preaching it. "The worst and saddest sight on earth," he exclaimed, "is an unwashed saint."

He acquired the reputation of being "the man with the magic touch."

When he had cleaned up the streets, he turned his attention to the intemperate and made West Chester "the most expensive place in the whole county to get a drink in."

Excuses availed little, genealogies were useless.

"My great grandfather," said one who stood before him, "my great grandfather came over—'" "It makes no difference," interrupted the Burgess, "whether your ancestors came over in the Mayflower, the Sunflower, or the Gillyflower. You are here, \$10.56."

Now and then, he had a word for the preachers. "If you want to evangelize the world," said he, "get out in it. One breath of pure oxygen sweeping down French Creek Valley is worth a page of commentary."

Occasionally, too, he addressed the occupants of the pews. "Every church member," he declared, "is a missionary and a messenger standing in the sunlight of public examination and public criticism. Are you equal to the

inspection or is your Christianity silk faced and cotton backed?"

With both preachers and pewholders he pleaded with all the force of his strong personality for social comradeship and emphasized the benefits of kindness. "May the milk of human kindness," urged he, "be neither skimmed nor passed through a separator." Of these varieties he had seen enough.

But above all things else, Pennypacker was an advocate of "open air."

Like Brown, "the recluse," he believed that, if we would only abandon the stuffy houses and live more in the fields, we would forget a thousand ailments and would cease to look at things with bilious eyes; that old age would come gloriously on like the foliage and we would look into the face of the last enemy and find man's truest friend. He acted on his views and walked over the county to look up various historical matters and incidentally to enjoy a country dinner, of which he was fond.

Once, when travelling in West Bradford, he stopped at a farm house where the hostess set a pitcher of milk before him. The milk soon disappeared. The pitcher was speedily refilled and as speedily emptied. A few hours later he

referred to the "creamy product" so complimentarily that he received an additional supply. An interesting conversation followed and then, just as he was leaving, he expressed a desire to drink one glass more to the health of the hostess and all her family. A son, who was present, looked up the pitcher, but found it empty. He examined the ice cooler, alas! in vain. The hostess, however, was not to be outdone. Going to the porch, she shouted to the hired man, "Jimmy, bring up the herd."

Not a few of Pennypacker's trips about the county were in search of minerals and antiques. For many years before his death you would have found him at any sale where antiques might be expected to be offered. Let the vendue be in West Caln or East Nottingham, let the day be rainy or sleety, it mattered not to him. Even clients must wait. Antiques before business. Perhaps I should modify that expression. "Charlie" made a business of antiques.

On one occasion a stranger in West Chester informed me that she had purchased "enough antiques from Mr. Pennypacker to furnish a house, each antique having its own peculiar and interesting story." He gathered them

from all quarters. I have seen him at a sale, bidding at some old piece of cracked china, with his pockets bulging out with Indian arrow heads and iron pyrites. For "Charlie" was a collector of minerals—in fact a mineralogist. Not a mineralogist of the first rank, nor yet of the rear, but one who loved the science, one who was sufficiently informed to write for mineralogical journals and sufficiently shrewd to look after his own interests among mineralogical collectors.

His collection was among the finest in the county and his interest in this study continued unabated until death.

The last years of his life found him receiving consignments of minerals from abroad, repacking and shipping them to various parts of America.

I liked Pennypacker because he was no pretender to virtues which he did not possess. I liked him especially because he had the utmost contempt for the Veneering family.

He knew the pedigree of every veneered barbarian in the county and they studiously avoided him.

Pennypacker enjoyed life. He believed that the world is "no blot for us, nor blank—it means intensely and it means good."

When his health failed, when the snows began  
and the blasts denoted he was "nearing the  
place," he advanced with Christian fortitude,  
declaring as he went:

"When all is done, say not my life is o'er,  
And that through death I seek a dimmer shore;  
But rather say, my morn has just begun,  
I seek the dawn and not the setting sun,  
When all is done."

## THE ANNEX

JUSTITIA—NIL NISI BONUM

"A nonsensical lullaby of some nurse put into Latin by some pedant to be chanted by some hypocrite to the end of the world."

STERNE, *Letters.*

**R**EADER, in your passage from the Safe Deposit Company where you have been receiving your half-yearly dividends, you have often stopped to look at the stone edifice opposite, sometimes occupied by courts and juries.

If ever you were an unsuccessful suitor you probably echoed the words of the late John Hickman:

"Justice is d—— uncertain here."

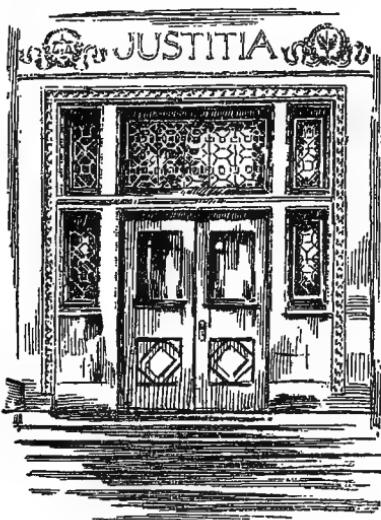
Whether Hickman, in suggesting this motto for the old court-house, had reference to the opinions of the Bench or the verdicts of juries, cannot now be determined. Possibly he included both. Was the observation just? Who can answer? Counsel and litigants alike are dead and the issues themselves are forgotten.

However this may be, the architects of the new wing, believing that the king-becoming

graces of justice, verity and stableness, were not rarer in courts than in private life, were unwilling to adopt the suggestion of Mr. Hickman, and were unable to select any other motto that would be equally acceptable to the convicted criminal and the loser in the civil lotteries therein conducted. They accordingly displayed

their wisdom by decorating its interior with emblematic balances and by carving over its entrance the simple word "Justitia."

Like the responses of the ancient oracles, "Justitia" has a double meaning. To the successful



it indicates what is actually administered; to the disappointed, only what ought to be. Upon the marble stairway inside, the Commissioners have left their own inscriptions in letters more enduring. While "Justitia" is subjected to the changes of the seasons, their names are carefully protected from the elements.



THE NIL NISI BONUM ROOM



No frosts can crack them, no rains obliterate. Placed where all must see them, they will undoubtedly be remembered by the taxpayers of the present generation and have a fair prospect of immortality with the members of the Bar. Some evil-disposed persons, it is true, have criticized them for the care they bestowed on the preservation of their names. This criticism is most unjust. Is not the builder greater than the house he builds? After all, if their names were erased and "Justitia" were brought inside, would our people know any more about her than they do today?



Does she not, like Diana, constantly elude her pursuers? Did not the Texas judge who found her, tell us when he dissected her he discovered she was but "a chaotic mass of principles?" She must not be expected, therefore, to make her appearance in court. Her representative is law, and law is at best but an approximation. "Justice," said he, "is the

virgin gold of the mine, while law is the coin from the mint with the stamp of government on it." This is beautiful rhetoric. I have never seen a fortunate suitor who did not appreciate the metaphor. Not so, however, with the unsuccessful. When I said to one of this class, who had just paid a heavy bill of costs in addition to losing what he regarded as a meritorious case: "You are now receiving fresh coin from the mint with the government stamp upon it," he ejaculated something that sounded strangely like the sentiment of Hickman.

How much did the Annex cost? Who can say? Sphinx-like it answers no questions. The Bar of Chester made no inquiry at the time, nor has it made any since, nor does it care to know. It contents itself with recognizing and expressing its debt of everlasting gratitude to the architect who designed and the Commissioners who approved that portion of it known as the Law Library.

It is the one place in the entire building where the odor of geraniums mingles its fragrance with the mustiness of the law. In it, one finds a pleasant retreat from the tumult of the "Sessions" and the noisy harangues of



JUDGE WILLIAM BUTLER, JR.      JUDGE J. FRANK E. HAUSE



criminal advocates. Someone has called it the "Nil Nisi Bonum Room," where briefs and reputations are made: briefs while living, reputations when dead.

Here the Bar meets and pays its last tribute of affectionate regard to its deceased members. Here "naught is set down in malice," and much is extenuated. What if resolutions are sometimes adopted which "Justitia" cannot approve. She has been placed so far down on the outer wall that we neither see her eye, nor hear her stern "non licet."

Thanks to the Commissioners, here we expect to study if the Fates who hold the keys do not forbid, and here when life's play has been acted out we hope to have our eulogies pronounced, our faults forgotten, and our virtues magnified. Here in times of sadness we console ourselves with the thought that when nothing remains of us save recollections, an obliging committee in accordance with established precedents will discover and make public virtues which bloomed arbutus-like, of which we never dreamed.

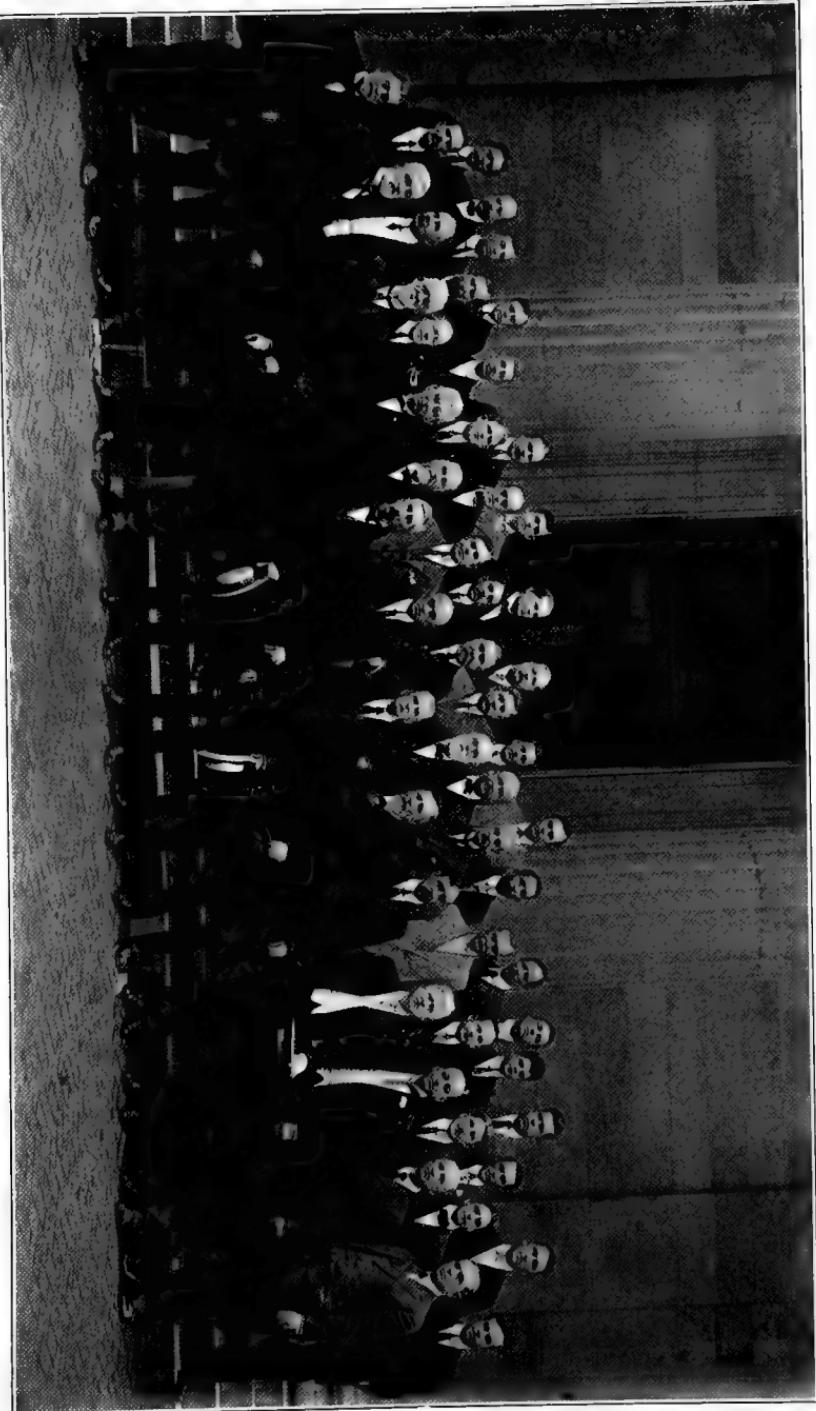
Commendatory as this practice is, there is much suggestiveness in the words that a Minnesota lawyer had printed on the back of his card:

"If my friends have alabaster boxes laid

away full of fragrant perfumes of sympathy and affection which they intend to break over my dead body, I would they would bring them out in my weary and troubled hours and open them, that I may be refreshed and cheered by them while I need them. Postmortem kindness does not cheer the troubled spirit. Flowers cast no fragrance backwards over life's weary way."

'Tis a noble stairway that leads to the court-room; ample and chaste, but the one in the old building that is not decorated with tablets, nor adorned with the names of any of the Commissioners, is more interesting to the imaginative mind; the stairway of many memories, whose stones have echoed the footsteps of learned judges and distinguished lawyers, whose walls have heard the sighs of the condemned, who hoped for mercy but failed to find it—the stairway which led to the prison, up which Udder-zook and Grant went to their trial, and down which they went to their death.

It is closed up now, for the old tribunal is changed. With the stairway the pillars have disappeared. Behind these pillars the judges were accustomed to walk. Judges, did I say? Judges then, shadows now, whose voices we



THE BAR OF CHESTER COUNTY IN 1911



no longer hear, but whose figures we can sometimes dimly trace, for memory can renew the architecture and invest it with the figures which once were seen with the bodily eye. We say with Byron—

“ Shadows of beauty, shadows of power,  
Rise to your duty, this is the hour,”

and forthwith they appear.

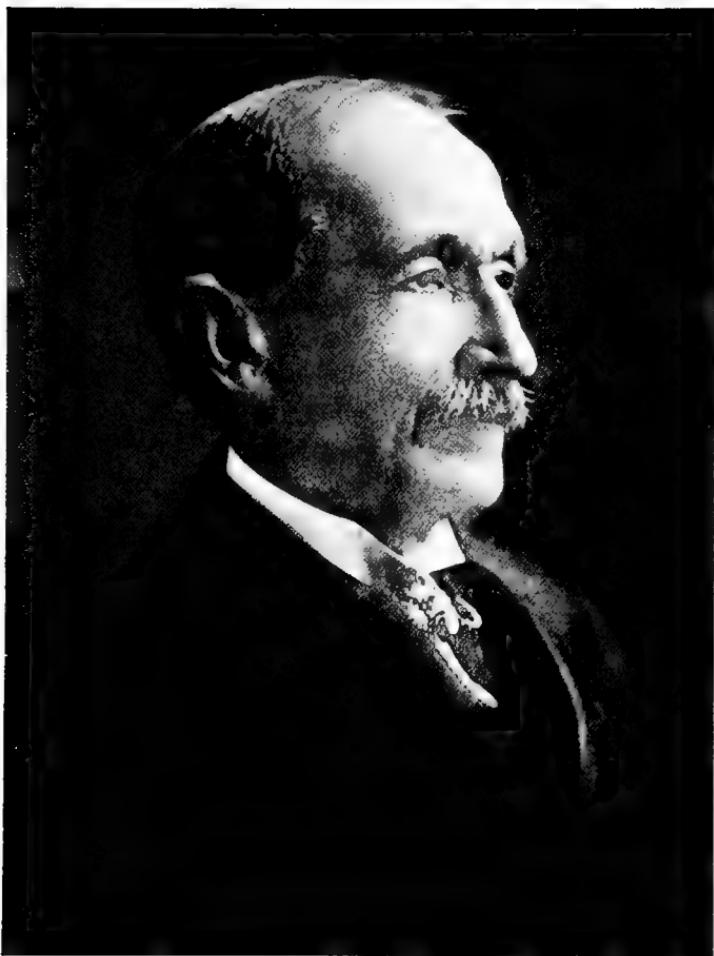
## WAYNE MACVEAGH

“ Still did the notions throng  
About his eloquent tongue;  
Nor could his ink flow faster than his wit.”  
ABRAHAM COWLEY.

THE late Governor Pennypacker in his published autobiography, mentions among his many accomplishments that of being able to dilate his nostrils. I am not alone in thinking that it would have been of more benefit to him had he been able so to expand his mind as to conceive the thought that God had created some men of his generation who, intellectually, were the equals of himself.

MacVeagh was one of these men. Pennypacker's effort to express him as a compound of volatility, instability, caustic acuteness and much oratorical fervor, is as absurd as was the attempt of Pennypacker's enemies to present “the Governor” as “a bug-hunting lawyer in boots.”

MacVeagh had fervor, Pennypacker did hunt bugs; but MacVeagh had other qualities, Pennypacker other occupations. According to the



WAYNE MAC VEAGH



Governor's statement he could have greeted visitors from Holland, Germany, France, Spain and Italy in the language of their respective countries. MacVeagh could not have done this, at least, could not have done it in a manner that would have been satisfactory to himself; but there was no ambassadorial position in any of these countries that he could not have filled with acceptability and distinction.

Pennypacker and MacVeagh were both students of history until their death, but after different fashions. Pennypacker searched for facts, particularly facts relating to his County and State, and having found them, tabulated them for future use; MacVeagh, on the other hand, sought principles, of which such facts were but the expression.

Some of Pennypacker's commonplace books were Old Curiosity Shops, in which he had stored a variety of strange events and odd sayings erroneously valued by him in proportion to the trouble experienced in finding them. His library also contained "many a quaint and curious volume of forgotten lore." Years of labor both as lawyer and historian had enabled him to gather together a mass of technical information on which he placed singular emphasis,

blind to the truth discovered by him in later life that even technical information is of less importance than the power to think accurately. His maturer judgment interpreting his experience told him that "it is what is digested, and not what is taken into the mind and stomach, that nourishes."

Years ago, Adam Semple was wont to distinguish between two kinds of knowledge; one, in which the facts possessed remain separate and apart from the individual who possesses them, like jewels in a casket—the jewels valuable no doubt, but the casket little the better for them; the other, where the facts are taken up, absorbed and transmuted into life—the jewel box itself becoming a jewel.

MacVeagh's reading did not make him a mere book of history which somehow had found a tongue, but developed a philosophic thinker qualified to play any part in the national drama to which his country might call him.

And it did call him. I remember as of yesterday his entry into the court room of 1880—a spare figure with fire-lit face, radiating good humor alike to janitor and judge, summoned by Garfield to become Attorney-General of the United States.

Standing in the old court room, the scene of his early triumphs, he received with unmixed pleasure the gratulations of his friends.

In this very place a quarter of a century before, he had assisted his father-in-law, Counsellor Lewis. "A strong combination that," remarked a Philadelphia attorney, "old Lewis makes the balls and MacVeagh fires them."

But MacVeagh did not occupy the center of the stage alone in those days, for Hickman was in active practice, and Hickman was a lawyer to be reckoned with at any place, at any time.

MacVeagh's declamatory manner encountered Hickman's causticity in many a case. Once in a prosecution for embezzlement—which occurred about the time of the Tweed disclosures in New York—Hickman was summing up when MacVeagh, who represented the defendant, interrupted him and exclaimed a little theatrically, "But *we* have *vouchers*." "So had *Tweed*," responded Hickman, "So had *Tweed*."

MacVeagh has suffered a little alike from indiscriminate eulogists and jealous detractors. He was not an Evarts or a Johnson in legal knowledge, nor was he a Charlton Lewis in classical lore, nor could he have prepared or delivered an address after the manner of Brown at Valley Forge. But Lewis had none of

MacVeagh's dramatic force, and Brown's genius was limited to historical occasions with months for preparing and committing to the letter.

MacVeagh had his forces always at his command and could marshal them at a moment's notice. He was not averse to a legal conflict, and, like most lawyers of Irish blood, fought best when apparently driven into a corner.

His literary friends were numerous, for his literary acquirements were great. Longfellow, Lowell, Curtis, Holmes, Taylor, name whom you might, he knew them all and knew them intimately. It is not surprising that Matthew Arnold found him one of the most interesting men in America.

His conversation lighted up every object it touched. In fact, his wit shone everywhere; at the little suppers in Spence's oyster house as well as at the elaborate functions of the Bellevue and the Union League.

Yet he was not always the brightest luminary. At a banquet given to Archbishop Ryan by prominent Philadelphians, MacVeagh, who was at that time counsel for the Pennsylvania Railroad, said to the distinguished prelate: "I will secure for your Grace a pass over the railroads of my company to carry you wherever you may be pleased to go if your Grace in return

will obtain one for me by which I shall be safely and securely transported to Heaven."

"Nothing would give me greater pleasure," replied the amiable Archbishop, "but I should not like to separate you from your Company."

Some who knew MacVeagh well thought him vain and egotistic. In his earlier years, there were some outcroppings of vanity, and throughout life a little Ciceronian egotism did manifest itself at times, but like Wilkes's squint it was not altogether unbecoming.

MacVeagh made his last appearance before the Bench at West Chester on October 25, 1905, in the case of the "Chester County Republican Nominations." As counsel for exceptants he labored to show that the terms of the county committeemen had expired at the time they made the nominations and he succeeded in convincing one-half of the Court that such was the fact, but the Supreme Court, on appeal, corrected Judge Hemphill's error and no harm was done.

When MacVeagh's name is mentioned now, it brings to our remembrance not the lawyer, nor the statesman, nor the diplomat, but the man whose warmth of greeting was the sincere expression of his American heart.

## THE COATESVILLE "LYNCHING"

"In such a case, there's little more to say."

GOETHE, *Faust*.

ON August 12, 1911, Zachariah Walker committed a horrible crime.

On August 13, 1911, Zachariah Walker suffered a horrible punishment.

Edgar Rice was a special policeman of the Borough of Coatesville, humane and fearless.

Zachariah Walker was a worthless negro from Virginia.

According to Walker's story, in the early evening of the 12th he was in Coatesville drinking gin. Later he returned to Barnard Town and amused himself by firing two shots at a foreigner. When Rice attempted to arrest him for a violation of law he resisted and killed him.

Recognizing the enormity of his crime, he picked up the officer's revolver, grabbed a hat from a Hungarian's head and ran to a nearby hill, where he remained till midnight, "watch-

ing the automobiles and officers going up and down the road."

About one o'clock in the morning he returned to his shack, got a black cap and took across the fields to a barn. Some hours later, when he left the barn, he was approached by two men, one of whom he knocked down, the other fled. (As a matter of fact he drew his revolver, but it failed to go off.)

Shortly afterwards he retreated to Faddis's Wood, where, to use his own words: "I saw Constable Umstead in his uniform come down the road in an automobile and I heard the crowd say they were going to surround the woods; then I knew it was all up with me. . . . So I thought I would end it all and send a bullet into the back of my head."

From Faddis's Wood, Walker was brought to the Coatesville lock-up, and later in the afternoon was taken in a patrol wagon to the Coatesville Hospital, located in East Fallowfield Township, just outside the Borough limits. Here his wounds, which were not dangerous, were dressed, and his escape was provided against by chaining him to a cot.

For hours visitors flocked to the hospital, urged on by prurient curiosity; for hours

groups on the sidewalk discussed the worthlessness of Walker and the value of Rice—his courage, his kindly disposition, his thoughtfulness in dealing with the unfortunate victims of drink; how he had often turned their faces homeward, how he had even accompanied them thither and saved their families the disgrace attendant on arrest.

Mingled with this sentiment of esteem for Rice's character and this appreciation of his services, was a deep sympathy for his widow. To her and the fatherless children not a heart but went out.

Walker's crime was no ordinary homicide. It was the brutal murder of Coatesville's representative of law, order, decency and security. Walker raised the red flag of anarchy and fell a victim to his own act.

Out in Faddis's Wood he recognized the gravity of his offence and by his attempt at suicide declared himself worthy of death.

At nine-thirty o'clock that night, that sentence was executed. As early as eight, a great crowd had gathered in front of the Brandywine Fire House, fifteen minutes later it started for the hospital. By nine o'clock more than a thousand persons were on the hospital grounds.

It was rumored that Walker was about to be removed. The crowd hurriedly examined an ambulance backed up against the hospital entrance, and finding it empty broke the windows of the building, rushed up stairs, brushed aside the officials, seized the cot on which Walker was lying, carried it to the ground floor and then dragged it down twenty-four steps to the road in front.

Down the Towerville road they went to the farm of Sarah J. Newlin, where they burned him to death. Twice he attempted to escape, twice he was forced back into the flames. At last, it was over. No! not over—

Walker had violated the law, grievously violated it; so had his executioners. He had shown no mercy to his victim; he received even less.

There were a few citizens of Coatesville who applauded the action of the mob and called it "swift and speedy justice;" there were some who condoned it. But when the excitement had died down, sober-minded men condemned the lynching in their hearts whether they voiced their condemnation in words or not.

Who was responsible? "The Chief of Police," said some; "the officer at the hospital,"

cried others; while here and there were heard voices against both the Burgess and the District Attorney.

"It could have been prevented," said an alliterative writer, "if there had been one brave man big enough to rise above petty, piddling politics and personal pusillanimity; but alas! there was no voice, no vocal conscience. The ten commandments, like all the preachers, were having a vacation, and the Bible classes of Coatesville while studying Jeremiah were practicing Zedekiah."

It could have been prevented if—but unfortunately it had occurred, and soon afterwards not only the papers of America but the British papers, the Continental papers, even the papers of Asia, gave every ghastly detail to their readers and Coatesville's name was put on the whole world's map in hideous burnt-stick letters. For months it was the theme of many an editorial, the text for many a sermon.

One preacher in Reading, fearful lest he contaminate his mouth by uttering the word "Coatesville," announced as his subject, "Forty Miles from Hell." Moore, of the New York *Herald*, was more dispassionate: "The fairer the face," said he, "the plainer the disfigurement."

The Governor of Pennsylvania pledged the assistance of the State Constabulary and the Attorney-General's Department offered its assistance.

Almost immediately the State cast its drag-net and hauled in six or seven persons, whom it charged with murder.

The first case to be called was Commonwealth against Swartz. Swartz was a youth of eighteen and had counsel assigned him by the Court.

"Do you think any jury would convict that boy of being a principal in the lynching?" asked a spectator of a member of the Bar.

"Never," replied the lawyer, "unless the jury were to act in accordance with the rules of a certain English juror who declared:

"'I hallus convicts, cause hi hargues, hif 'e haint guilty whats 'e 'ere for?'"

At three o'clock on Saturday, October 3, the evidence was all in, the arguments were made and the case was committed.

At nine o'clock in the evening the jury notified the Court that they had agreed upon a verdict. The Court sent for the "clerk," who in the midst of a death-like stillness inquired: "How say you, Gentlemen of the

Jury, in the issue found between the Commonwealth of Pennsylvania and Joseph Swartz, charged with murder; do you find the defendant guilty or not guilty?"

"Not guilty," answered the foreman: "Not guilty," nodded the remaining eleven. Immediately the crowd in the corridor of the courthouse shouted the verdict to the throng outside. A minute later the telegraph wires scattered the news broadcast over the country: "The defendant in the first of the Coatesville cases tried was acquitted at 9.30 P.M.

The Commonwealth had exerted itself to the utmost. It had retained former District Attorney Gawthrop as special counsel, it had sent Deputy Attorney-General Cunningham from Harrisburg to assist him, and by the employment of skilful detectives had collected all the relevant evidence that could possibly be secured.

In submitting its case to the jury, the Commonwealth had relied with much confidence upon an alleged confession, testimonially untrustworthy, according to Burgess Shallcross, by reason of certain promises made to the defendant by the officer in charge.

The Court had instructed the jury that if such promises were made, the alleged confes-

sion must be excluded, for a confession forced from the mind by the flattery of hope or the torture of fear comes in so questionable a shape when it is to be considered as evidence of guilt that no credit may be given to it.

Squaring its actions with this rectangular principle, the jury disregarded the confession and returned the only possible verdict consistent with the law and the facts.

And now, October 3, 1911, all was over. Mr. Greenwood tarried a moment to receive congratulations for his admirable defense and then left for Coatesville; Mr. Cunningham started for Harrisburg; Swartz for home.

Five other cases growing out of the lynching followed with similar results, whereupon the Commonwealth applied to the Supreme Court for a change of venue, which tribunal, having no power to grant such a petition, refused it.

## THE MONUMENT ON THE COURT-HOUSE LAWN

"Erected by the County of Chester in grateful commemoration of the Heroism, Sacrifices and Patriotism of her Soldiers, Sailors and Marines displayed during the late War of the Rebellion for the Preservation of the Union and the Supremacy of its Flag."

I NEVER pass the beautiful bronze figure on the Court-house lawn without recalling the late Major E. B. Moore.

For fifteen years, by voice and pen, he advocated the erection of a monument to the soldiers and sailors of Chester County who served in the War of '61. For ten years at least he devoted the greater part of his time in preparing what he thought was a fitting model for such a permanent memorial.

It was the paramount thought of his old age; his talk by day, his dream by night. Unfortunately, he died before the present monument was erected. Perhaps it was best, for the Commissioners were artistically compelled to decline the design upon which he had labored so long and so lovingly.



THE MONUMENT ON THE COURT-HOUSE LAWN



It was the fortune of Harry Lewis Raul, a sculptor of Easton, to submit a soldierly figure that won instant commendation. His design was accepted, work was begun and the spring of 1915 saw the statue in position.

June 11 was fixed for its unveiling.

The day opened bright, and by noon the streets of West Chester were thronged with citizens from all sections of the County.

Among the veterans who gathered about the monument were Major McCauley, whose empty sleeve spoke eloquently of his military service; Major McFarlan, erect as when he first attracted the attention of Sheridan, and Captain Underwood, modest, courteous and brave.

It was veterans' day!

The Bar rejoiced with them, for in their ranks it could point to at least three representatives: Windle, Cornwell, and Talbot. Of these, the most conspicuous was Cornwell—eighty years of age, straight as an Indian; Talbot was much younger, having entered the army when a mere stripling; while Windle was a fighting Quaker who, a half century before, had stood guard over Jefferson Davis at Fortress Monroe.

Colonels Smith and Hooton, Major Fulton, W. M. Hinkson, and other soldiers of the Bar

were not there—except in the hearts of their comrades.

When the Court-house clock struck the hour of two, Horace Beale, of Parkesburg, rose and looking out over a sea of faces, expressed his gratitude for the privilege of presiding, and as chairman and citizen congratulated the County Commissioners upon “the permanent memorial to the bravery and self-sacrifice of those who stood for the defence of our country.”

At the conclusion of Chairman Beale’s remarks the Solicitor of the County Commissioners formally presented the monument.

“The present Board of Commissioners,” said he, “has acted, and the memorial selected by them we unveil today. Would that we could unveil our hearts as well! Veterans, no monument can adequately express our feelings or your deeds! Let the sculptor mould his clay ever so deftly, the form that he creates for us will yet fail to typify all the virtues that were illustrated by our heroes on land and sea, for this is the county of Nields and Taylor and Guss and Carruthers and Smith and Bell and Penny-packer.”

When the County Solicitor finished, Captain Underwood, on behalf of the veterans, grace-



LIEUTENANT JOHN STOKES BALDWIN

*of the Fourth U. S. Infantry*

Sailed with his regiment from Newport News early in April, 1918, and disembarked at a port in France about April 15, 1918.

Participated in the Battle of the Marne in July, 1918, and continued with his regiment in all subsequent actions.

Officially reported killed in battle, October 6, 1918.



fully received the monument, and George S. Graham, of Philadelphia, concluded the ceremonies with an elaborate address.

On August 20, 1917, I stood alongside of this monument and watched the soldiers of Company "I" march by, headed for Europe. Two of their officers, Captain Groff and Lieutenant Windle, were members of the Bar. Since then, other lawyers have shown similar devotion to the cause of Liberty: Aaron Weisse is on the sea; Raymond Reid is somewhere in France, and to Lieutenant Baldwin has fallen the honor of taking part in the capture of Château Thierry.

Today, as I write these words, the Hindenburg line is being pierced; on some tomorrow, please God, our boys will enter Berlin!









